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18 Attorneys for Plaintiffs

19  
20 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
21  
22 IN AND FOR THE COUNTY OF MARICOPA

23 JOSEPH W., a married man,  
24  
25 Plaintiff,

26 vs.

27 THE ROMAN CATHOLIC CHURCH OF THE  
28 DIOCESE OF PHOENIX, an Arizona  
corporation; ST. THOMAS AQUINAS ROMAN  
CATHOLIC PARISH AVONDALE, an Arizona  
corporation d/b/a ST. THOMAS AQUINAS  
CATHOLIC CHURCH, ST. THOMAS AQUINAS  
CATHOLIC SCHOOL, and ST. THOMAS  
AQUINAS MISSION CATHOLIC CHURCH IN  
LITCHFIELD PARK; ST. JOHN VIANNEY  
ROMAN CATHOLIC PARISH GOODYEAR, an  
Arizona corporation, d/b/a ST. THOMAS  
AQUINAS CATHOLIC CHURCH, ST. THOMAS

Case No. CV2016-092996

FIRST AMENDED COMPLAINT  
(Public Nuisance)  
(Negligence)  
(Negligent Supervision/Failure to Warn)  
(Negligent Hiring/Retention)  
(Fraud)  
(Fiduciary/Confidential Relationship  
Fraud and Conspiracy)  
(Breach of Fiduciary Duty)  
(Negligent Failure Warn, Train or  
Educate Plaintiff)  
(Intentional Infliction of Emotional  
Distress)

1 AQUINAS MISSION CATHOLIC CHURCH and  
2 ST. THOMAS AQUINAS CATHOLIC  
3 SCHOOL;ST. VINCENT DE PAUL ROMAN  
4 CATHOLIC PARISH PHOENIX, an Arizona  
5 corporation, d/b/a ST. VINCENT DE PAUL  
6 CATHOLIC SCHOOL, and ST. VINCENT DE  
7 PAUL CATHOLIC CHURCH; ROMAN  
8 CATHOLIC BISHOP OF PHOENIX; THOMAS  
9 J. O'BRIEN (Bishop emeritus), an individual;  
10 JOHN and JANE DOES 1-100; XYZ  
11 CORPORATIONS 1-100; ABC  
12 PARTNERSHIPS 1-100,

Defendants

(Negligent Infliction of Emotional  
Distress)  
(Fraud and Deceit)  
(Premises Liability)  
(Childhood Sexual Abuse)  
(Sexual Battery)

(Assigned to the Hon. David K. Udall)

10 **GENERAL ALLEGATIONS**

11  
12 1. Plaintiff Joseph W. is using a fictitious name in this First Amended Complaint  
13 under rights of privacy granted by the Constitution of the State of Arizona; Plaintiff  
14 Joseph W. is currently an adult male. Plaintiff Joseph W. was a minor residing in  
15 Maricopa County, Arizona, at the time of the sexual abuse alleged herein.

16 2. Plaintiff Joseph W. is a married man.

17  
18 3. Defendant The Roman Catholic Church of the Diocese of Phoenix was at all  
19 times material an Arizona corporation authorized to conduct business in, among other  
20 counties, Maricopa County, Arizona.

21 4. Defendant The Roman Catholic Church of the Diocese of Phoenix at all times  
22 material had responsibility for Roman Catholic Church operations in, among other  
23 locations, Phoenix, Arizona, Litchfield Park, Arizona and Avondale, Arizona, among  
24 other catholic communities and parishes, including the operations of Defendants St.  
25 Thomas Aquinas Roman Catholic Church, St. Thomas Aquinas Roman Catholic School,  
26 St. Thomas Aquinas Mission Catholic Church in Litchfield Park, St. John Vianney  
27  
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1 Roman Catholic Parish Goodyear, St. Vincent de Paul Roman Catholic Parish Phoenix,  
2 St. Vincent de Paul Catholic Church and St. Vincent de Paul Catholic School.

3 5. Defendant St. Thomas Aquinas Roman Catholic Parish Avondale was at all times  
4 material an Arizona corporation authorized to conduct business in Maricopa County,  
5 Arizona.

6  
7 6. Defendant St. Thomas Aquinas Roman Catholic Parish Avondale at all times  
8 material had responsibility for operations of Defendants St. Thomas Aquinas Roman  
9 Catholic Church, St. Thomas Aquinas Roman Catholic School, and St. Thomas Aquinas  
10 Mission Catholic Church in Litchfield Park, all of which were located in Maricopa  
11 County, Arizona.

12  
13 7. Defendant St. John Vianney Roman Catholic Church was at all times material an  
14 Arizona corporation authorized to conduct business in Maricopa County, Arizona.

15  
16 8. Defendant St. John Vianney Roman Catholic Church was at all times material  
17 responsible for the operations of Defendants St. Thomas Aquinas Roman Catholic  
18 Church, St. Thomas Aquinas Roman Catholic School, and St. Thomas Aquinas Mission  
19 Catholic Church in Litchfield Park, all of which were located in Maricopa County,  
20 Arizona.

21  
22 9. Defendant St. Vincent de Paul Roman Catholic Parish Phoenix was at all times  
23 material an Arizona corporation authorized to conduct business in Maricopa County,  
24 Arizona.

25  
26 10. Defendant St. Vincent de Paul Roman Catholic Parish Phoenix was at all times  
27 material responsible for the operations of St. Vincent de Paul Catholic Church and St.  
28 Vincent de Paul Roman Catholic School.

1 11. Defendant Roman Catholic Bishop of Phoenix was the leader of, and at all times  
2 material responsible for operations within the Roman Catholic Diocese in Phoenix in  
3 which sexual abuse occurred involving the Plaintiff.  
4

5 12 Defendants St. Thomas Aquinas Catholic Church and St. Vincent de Paul  
6 Catholic Church are Roman Catholic Churches located in Maricopa County, Arizona, at  
7 which the Plaintiff Joseph W. was a parishioner during the period of wrongful conduct.  
8

9 13. Defendants St. Thomas Aquinas Catholic School and St. Vincent de Paul  
10 Catholic School are located in Maricopa County and are schools where Plaintiff Joseph  
11 W. was a student during some of the period of wrongful conduct.

12 14. Defendant Thomas J. O'Brien (Bishop emeritus), the Perpetrator, was an  
13 individual residing and/or doing business in Maricopa County, during the period of  
14 abuse of Plaintiff, and was and/or is a Roman Catholic Bishop, priest, member,  
15 employee, managing agent, agent and/or servant of Defendants The Roman Catholic  
16 Church of the Diocese of Phoenix, St. Thomas Aquinas Roman Catholic Church, St.  
17 Thomas Aquinas Roman Catholic School, St. Thomas Aquinas Mission Catholic Church  
18 in Litchfield Park, St. John Vianney Roman Catholic Parish Goodyear, St. Vincent de  
19 Paul Roman Catholic Parish Phoenix, St. Vincent de Paul Catholic Church and St.  
20 Vincent de Paul Catholic School, and/or Does 1-100.  
21

22 15. At all times material, Plaintiff Joseph W. was a minor in the custody and control  
23 of the Defendants, and each of them.  
24

25 16. Defendants and each of them caused events to occur in Maricopa County out of  
26 which this cause of action arises.  
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1 **BACKGROUND FACTS APPLICABLE TO ALL COUNTS**

2 17. Plaintiff Joseph W. was raised in a devoutly Roman Catholic family and attended  
3 a number of Phoenix-area parishes as a child, including St. Thomas Aquinas Catholic  
4 Church and St. Vincent de Paul Catholic Church. He also attended a private Roman  
5 Catholic School in Phoenix.  
6

7 18. The Perpetrator and Defendants' other pedophilic and/or ephebophilic agents  
8 committed acts of Childhood Sexual Abuse in Phoenix before, during, and after the time  
9 Joseph W. attended St. Thomas Aquinas Catholic Church and St. Vincent de Paul  
10 Catholic Church. Defendants' corporate practice of concealing the identities,  
11 propensities, and current assignments and/or residences of these perpetrators has  
12 enabled and empowered such men to sexually assault and/or continue to place at risk  
13 countless children in Phoenix, as well as at the various locations in the United States  
14 and throughout the world where Defendants have conducted their business for nearly  
15 half a century. Finally, an unknown number of Defendants' former pedophilic and/or  
16 ephebophilic agents, whose propensities Defendants have been aware of for years but  
17 have disclosed to no one, continue to sexually assault and/or place at risk countless  
18 children around these various locations as well as at numerous other locations where  
19 these former Diocesan priests now reside.  
20  
21

22 19. Defendants knew or should have known of the risk posed by the Perpetrator to  
23 children before and during the time period he sexually abused Joseph W. Defendants  
24 could have stopped this abuse from continuing, and undoubtedly could have saved  
25 other boys from subsequent abuse by the Perpetrator. Instead, Defendants told no one,  
26  
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1 protected their clearly pedophilic brethren and their own financial interests, and as a  
2 result the abuse continued.

3 20. Numerous other pedophilic and/or ephebophilic agents of Defendants have been  
4 sexually assaulting countless other children in, among other locations, Phoenix for  
5 decades. During this time at least sixty-one (61) pedophilic and/or ephebophilic Roman  
6 Catholic bishops, priests, religious brothers, deacons or other church leaders have been  
7 granted faculties and/or assigned to work at and/or were living at and/or visiting and/or  
8 doing supply work at various locations around the Diocese of Phoenix, including but not  
9 limited to:  
10  
11

12 1 - Fr. Solomon Bandiho

13 2 – Bishop Thomas O’Brien

14 3 – Fr. George Bredemann

15 4 – Fr. Joseph Briceno

16 5 – Fr. James Burns

17 6 – Fr. William Byrne

18 7 – Fr. Patrick Callanan

19 8 – Fr. Dominic Candappa

20 9 – Fr. Patrick Colleary

21 10 - Fr. Timothy Conlon, OSC

22 11 - Fr. Jorge Cordova

23 12 – Fr. John Degnan

24 13 – Fr. John Doran

25 14 – Fr. Neil Emon, OSC

- 1 15 – Fr. John Feit
- 2 16 – Fr. Laurence Florez
- 3 17 - Fr. Dale Fushek
- 4 18 – Marc Gherna
- 5 19 - Fr. John Giandelone
- 6 20 - Fr. Charles Gielow, CMF
- 7 21 – Fr. Robert Gluch
- 8 22 - Deacon Ron Gonzalez
- 9 23 - Fr. Harold Graf
- 10 24 - Fr. Clement Hageman
- 11 25 – Fr. John Hall
- 12 26 - Fr. Joseph Henn, SDS
- 13 27 – Fr. Robert Kelly
- 14 28 - Fr. Robert Kirsch
- 15 29 - Fr. Marvin Knighton
- 16 30 - Fr. Louis Ladenburger, OFM
- 17 31 - Fr. Sung Lam
- 18 32 - Fr. Paul LeBrun, CSC
- 19 33 - Fr. Karl LeClaire, SDS
- 20 34 - Fr. Mark Lehman
- 21 35 - Fr. Joseph Lessard
- 22 36 - Fr. Jorge Ortiz Lopez, OFM
- 23 37 - Fr. Lawrence Lovell, CMF
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- 25
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- 1 38 - Fr. Donald McGuire, SJ
- 2 39 - Fr. Douglas McNeill
- 3 40 - Fr. Rene Messier
- 4 41 – Fr. Keven Monelli
- 5 42 - Fr. Harry Morgan
- 6 43 - Fr. Richard Ohlemacher, OSC
- 7 44 - Fr. Dennis Pecore, SDS
- 8 45 - Deacon Maxwell Rollin Pelton
- 9 46 - Fr. Henry Perez, SM
- 10 47 - Fr. George Pirrung
- 11 48 - Bishop James Rausch
- 12 49 - Fr. Loren Riebe
- 13 50 - Fr. Claudio Riol
- 14 51 - Fr. William Roper, CMF
- 15 52 - Fr. Charles Rourke
- 16 53 - Fr. Clemens Schlueter
- 17 54 - Fr. Wilputte “Lan” Sherwood
- 18 55 - Fr. John Spaulding
- 19 56 - Fr. Floyd Stromberg
- 20 57 - Fr. John Sullivan
- 21 58 - Fr. James Thompson
- 22 59 - Fr. David Viramontes
- 23 60 – Fr. John Vovko
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At least 73 children have been sexually abused in the Diocese of Phoenix by predatory church leaders assigned or in residence in the Diocese.

**THE DIOCESE'S POLICY OF PUBLICLY IDENTIFYING ONLY THOSE CURRENT OR FORMER PEDOPHILIC CHURCH LEADERS WHO ARE THE SUBJECT OF CRIMINAL OR CIVIL LITIGATION HAS CREATED A DEADLY ENVIRONMENT FOR TODAY'S CHILDREN**

21. Time and again the Diocese has had the opportunity to end the cycle of abuse by reporting perpetrators to law enforcement, and by notifying the general public when a Roman Catholic Church leader who has been or is still assigned, in residence or visiting the Diocese has been accused of sexually assaulting a child. Tragically, the Diocese's ongoing efforts to protect their pedophilic members, and to protect the corporation's financial interests, establish a continuing pattern of conduct causing new harm to and demonstrating a reckless disregard for the safety of today's children, and causing new trauma to adult survivors of clergy childhood sexual abuse.

22. For decades the Diocese has known some of its priests and religious brothers were sexually assaulting children within the geographic boundaries of the Diocese, or that Roman Catholic church leaders accused or suspected of such abuse outside of the Diocese were or had been assigned or in residence in the Diocese, and that, as a result, any child exposed to the Diocese's agents was at a heightened risk of being sexually assaulted. For decades the Diocese has been concealing these crimes, and shielding its criminal members from discovery, reporting such men to law enforcement and publicly identifying them only when the Diocese had no choice after such predators

1 became the subject of criminal or civil legal proceedings. The Perpetrator himself not  
2 only lead the Diocese down this dark path, but has admitted he, in his capacity as the  
3 Bishop of the Diocese, “allowed Roman Catholic priests under his supervision to have  
4 contact with minors after becoming aware of allegations of criminal sexual misconduct”  
5 and transferred “offending priests to situations where children could be further  
6 victimized.” Sadly, even with the growing awareness of and outrage over institutional  
7 cover-ups of childhood sexual abuse, the Diocese has not changed its ways. Instead,  
8 the Diocese has publicly identified less than half of the actual number of Roman  
9 Catholic Church leaders who have been accused or suspected of posing a risk to  
10 children, and who have been assigned or in residence within the Diocese. Additionally,  
11 the Diocese’s website encourages victims of such abuse to contact the Diocese’s own  
12 Office of Child and Youth Protection rather than law enforcement, thus all but  
13 guaranteeing the first report will be made internal to the Diocese. While the Diocese’s  
14 Child and Youth Protection webpage provides extensive contact information for the  
15 Diocese’s Office of Child and Youth Protection, it makes no reference to such  
16 information for law enforcement. In fact, to find any reference to law enforcement on  
17 the Diocese’s webpage a person seeking to report abuse must click on a link  
18 ambiguously titled “Make a Report” or “How to Make a Report.”

22 23. At all times material, Defendants The Roman Catholic Church of the Diocese of  
24 Phoenix, St. Thomas Aquinas Roman Catholic Church, St. Thomas Aquinas Roman  
25 Catholic School, St. Thomas Aquinas Mission Catholic Church in Litchfield Park, St.  
26 John Vianney Roman Catholic Parish Goodyear, St. Vincent de Paul Roman Catholic  
27

1 Parish Phoenix, St. Vincent de Paul Catholic Church and St. Vincent de Paul Catholic  
2 School are vicariously liable for the actions of Defendant Thomas J. O'Brien.

3 24. Defendant Thomas J. O'Brien repeatedly sexually abused Plaintiff Joseph W.  
4 when Plaintiff Joseph W. was a minor and attending Defendant St. Aquinas Catholic  
5 School and Parish and St. Vincent de Paul Catholic School and Parish during the 2nd  
6 through 5th grades of elementary education, from approximately 1977 through 1982.

7  
8 The abuse often took place before or during church services attended by Joseph  
9 W. and his family, and under the guise of Bishop O'Brien showing Joseph W. how to  
10 assist with some aspect of the ceremony, such as lighting incense. One of the earliest  
11 instances of abuse involved O'Brien placing his hands on the boy's thighs and kissing  
12 Joseph W. on the lips. In another instance Joseph W. recalls O'Brien orally copulating  
13 the young boy as he dissociated from the abuse that was occurring and focused on  
14 swinging the container containing the incense so that it would remain lit. In another  
15 instance O'Brien summoned Joseph W. from class and induced the boy to orally  
16 copulate O'Brien until the then-priest ejaculated on the boy's face. O'Brien  
17 subsequently cleaned Joseph W. with a white cloth while repeating to himself "I am not  
18 a sinner." O'Brien then told Joseph W. to do penance, and Joseph W. now recalls  
19 grabbing a rosary and doing penance in the pews of the large empty church.  
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23 The sexual abuse and exploitation of Plaintiff and the circumstances under which  
24 it occurred caused Plaintiff to develop various coping mechanisms which reasonably  
25 made him incapable of ascertaining the resulting damages from that conduct in that he  
26 repressed all memory of the abuse. Within two (2) years of filing this lawsuit, Plaintiff  
27 began to recover those memories. That recovery was triggered by his preparation for  
28

1 the baptism of his son in the Catholic Church. Until that time, Plaintiff neither knew nor  
2 reasonably should have known the facts underlying this lawsuit, nor that a wrong had  
3 occurred and caused him injury, and none of his causes of action had accrued.

4 Additionally, the recovery of these memories rendered Plaintiff of an unsound mind  
5 resulting both in the inability to manage his daily affairs, and to understand his legal  
6 rights and liabilities.  
7

8 **FIRST CAUSE OF ACTION**

9 **PUBLIC NUISANCE**

10 **(Against All Defendants)**

11  
12 25. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set  
13 forth herein.

14 26. Defendants continue to conspire and engage in efforts to: 1) conceal from the  
15 general public the sexual assaults committed by, the identities of, and the  
16 pedophilic/ephebophilic tendencies of, Defendant Thomas J. O'Brien and Defendants'  
17 other pedophilic agents; 2) attack the credibility of the victims of Defendant Thomas J.  
18 O'Brien and Defendants' other pedophilic/ephebophilic agents; 3) protect Defendant  
19 Thomas J. O'Brien and Defendants' other pedophilic/ephebophilic current and former  
20 agents from criminal prosecution and registration as sex offenders for their sexual  
21 assaults against children; 4) after receiving reports or notice of misconduct by men such  
22 as Defendant Thomas J. O'Brien, transferring them to new parishes without any  
23 warning to parishioners of the threat posed by such men, all in violation of law; and 5)  
24 making affirmative representations to current or future employers, regarding O'Brien's  
25 and Defendants' other pedophilic and/or ephebophilic agents' fitness for employment, in  
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1 positions that included working with children, while failing to disclose negative  
2 information regarding sexual misconduct by such men.

3 27. Pursuant to ARS 13-3825 the public has the right to know registered sex  
4 offenders' identifying information, risk assessment and date of release so that the public  
5 can identify such men and take protective measures on behalf of their children. The  
6 public also has a compelling interest in knowing if a prominent and powerful institution  
7 has cloaked in secrecy decades of sexual abuse. The negligence and/or deception and  
8 concealment by Defendants – pursuant to their policy of secrecy – interferes with and  
9 causes harm to these rights that are common to the public by preventing such men from  
10 being criminally prosecuted, thereby obstructing the public's right to identify such men  
11 as registered sex offenders. Defendants' secretive conduct also interferes with and  
12 causes harm to the public's right to know Defendants have concealed decades of  
13 sexual abuse by church leaders.

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16 The negligence and/or deception and concealment by Defendants was and is  
17 injurious to the health of, indecent or offensive to the senses of, and an obstruction to  
18 the free use of property by, the general public, including but not limited to residents of  
19 Maricopa County, Arizona and all other members of the general public who live in  
20 communities where Defendants conducted, and continue to conduct, their work and/or  
21 ministry, and was and is indecent and offensive to the senses, so as to interfere with the  
22 general public's comfortable enjoyment of life in that children cannot be left  
23 unsupervised in any location where Defendants' agents are present as the general  
24 public cannot trust Defendants to prohibit their pedophilic agents from supervising,  
25 caring for, or having any contact with children, nor to warn parents of the presence of  
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1 the pedophilic agents of Defendants, nor to identify their pedophilic agents, nor to  
2 identify and/or report to law enforcement their agents accused of childhood sexual  
3 abuse, nor to refrain from interfering with or obstructing the criminal investigations of  
4 these agents, thus creating an impairment of the safety of children in the neighborhoods  
5 where Defendants conducted, and continue to conduct, their work and/or ministries.  
6 Defendants' policy of secrecy with regards to their agents accused of childhood sexual  
7 abuse has prevented the criminal prosecution of such men, thus depriving the public of  
8 and causing harm to the public's right to identify and protect their children from sex  
9 offenders. That policy of secrecy also deprives the public of and causes harm to the  
10 right to identify institutions that have cloaked in secrecy childhood sexual abuse by their  
11 agents.  
12 agents.

14 28. Defendants' conduct has caused further injury to the public and severely  
15 impaired the safety of children where Defendants have protected and concealed  
16 Thomas J. O'Brien and Defendants' other pedophilic/ephebophilic agents from criminal  
17 prosecution and registration as sex offenders for their sexual assaults, where  
18 Defendants' other pedophilic/ephebophilic agents subsequently have left Defendants'  
19 employ, and where Defendants have disavowed any responsibility for Defendants' other  
20 pedophilic/ephebophilic former agents despite the fact Defendants facilitated these  
21 former agents' avoiding criminal prosecution and having to register as sex offenders.  
22 As a result of Defendants' conduct, when Defendants' former agents have sought  
23 employment placing them in positions of trust with children, Defendants are the only  
24 ones aware of the risk posed by these former agents, and potential employers,  
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1 childcare custodians, and parents have no means of identifying the risk to their children  
2 posed by such men who should be convicted and registered sex offenders.

3 29. The negligence and/or deception and concealment by Defendants was specially  
4 injurious to Plaintiff's health as he and his family were unaware of the danger posed to  
5 children left unsupervised with agents of Defendants, and as a result of this deception,  
6 Plaintiff was placed in the custody and control of Defendant Thomas J. O'Brien, at the  
7 time an agent of the Defendants, who subsequently and repeatedly sexually assaulted  
8 Plaintiff. The special injuries to Plaintiff are the sexual assaults by O'Brien that were  
9 caused and enabled by the deception and concealment by the Defendants of sexual  
10 abuse by church leaders.  
11  
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13 30. The continuing public nuisance created by Defendants was, and continues to be,  
14 a proximate cause of the injuries and damages to the general public and of Plaintiff's  
15 special injuries and damages as alleged herein.  
16

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

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

3 33. As a further result of the above-described conduct by Defendants, Plaintiff further  
4 requests injunctive relief prohibiting Defendants from, among other things: allowing their  
5 pedophilic/ephebophilic agents to have any unsupervised contact with children;  
6 transferring their pedophilic/ephebophilic agents to communities whose citizens are  
7 unaware of the risk to children posed by said agents; failing/refusing to disclose to  
8 and/or concealing from the general public and/or law enforcement when Defendants  
9 have transferred a pedophilic/ephebophilic agent into their midst; failing/refusing to  
10 disclose to and/or concealing from law enforcement and/or the general public the  
11 identities and the criminal acts of their pedophilic/ephebophilic agents; failing/refusing to  
12 disclose to and/or concealing from the public and/or law enforcement reports,  
13 complaints, accusations or allegations of acts of childhood sexual abuse committed by  
14 Defendants' current or former agents; and warning their agents accused of abuse that  
15 they are the subjects of a criminal investigation. Defendants should be ordered to stop  
16 failing/refusing to disclose to and/or concealing and instead should identify each and  
17 every one of their current and former agents who have been accused of childhood  
18 sexual abuse, the dates of the accusation(s), the date(s) of the alleged abuse, the  
19 location(s) of the alleged abuse, and the accused agents' assignment histories.  
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1 **SECOND CAUSE OF ACTION**

2 **(Negligence)**

3 **(Against All Defendants)**

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

7 35. While Plaintiff was a student at Defendant School and a member of Defendant  
8 Parish, Defendant O'Brien engaged in unpermitted, harmful and offensive sexual  
9 conduct and contact with Plaintiff. Said conduct may have occurred after the  
10 Defendants learned of the risk that Defendant O'Brien posed to children and while he  
11 was an employee, volunteer, representative, or agent of the Defendants and while in the  
12 course and scope of employment with the Defendants. Defendants' conduct was  
13 wanton and reckless and/or evidenced a conscious disregard for the rights and safety of  
14 Plaintiff and other children.  
15

16 36. Defendants The Roman Catholic Church of the Diocese of Phoenix, St. Thomas  
17 Aquinas Roman Catholic Church, St. Thomas Aquinas Roman Catholic School, St.  
18 Thomas Aquinas Mission Catholic Church in Litchfield Park, St. John Vianney Roman  
19 Catholic Parish Goodyear, St. Vincent de Paul Roman Catholic Parish Phoenix, St.  
20 Vincent de Paul Catholic Church and St. Vincent de Paul Catholic School knew that  
21 sexual predators of boys infiltrated the Catholic Church and knew or had reason to  
22 know of the danger that pedophiles presented to catholic school minors and minor  
23 parishioners before Plaintiff Joseph W. was sexually abused and either knew or had  
24 reason to know of the danger that Defendant Thomas J. O'Brien presented before  
25 Plaintiff Joseph W. was sexually abused, but instead, Defendants and each of them  
26  
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1 ignored that danger and permitted Defendant Thomas J. O'Brien to prey upon young  
2 boys, including Plaintiff Joseph W.

3 37. Defendants and each of them collected records which they maintained in secrecy  
4 detailing the pedophilic tendencies, charges and allegations against members of the  
5 Roman Catholic Church, priests and other ordinaries which revealed sexually-related  
6 dangers posed to minor children. Defendant Thomas J. O'Brien was personally involved  
7 in allegations of conspiracy to hide records of sexual abuse and molestation in the  
8 Catholic Church.  
9

10 38. Defendant Thomas J. O'Brien held multiple positions in the Catholic Church  
11 which allowed him access to minors and to Plaintiff Joseph W.  
12

13 39. Defendant Thomas J. O'Brien was known to the Defendants, and each of them,  
14 to have unlawful sexual contact with minors.  
15

16 40. Defendants, and each of them, were negligent in their supervision of Defendant  
17 Thomas J. O'Brien and, as a result of their negligence, Plaintiff Joseph W. was sexually  
18 abused as a minor.

19 **THIRD CAUSE OF ACTION**

20 **(Negligent Supervision/Failure to Warn)**

21 **(Against All Defendants)**

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

25 42. Defendants had a duty to provide reasonable supervision of Defendant Thomas  
26 J. O'Brien and Defendants' other pedophilic and/or ephebophilic agents, and to use  
27 reasonable care in investigating Thomas J. O'Brien and Defendants' other pedophilic  
28

1 and/or ephebophilic agents. Defendants also had a duty and to provide adequate  
2 warning to the Plaintiff, the Plaintiff's family, minor students, minor parishioners, and  
3 other archdioceses and/or dioceses into which they transferred Thomas J. O'Brien of  
4 Thomas J. O'Brien's and Defendants' other pedophilic and/or ephebophilic agents'  
5 dangerous propensities and unfitness, particularly after the conduct they observed by  
6 Thomas J. O'Brien in their respective dioceses and archdiocese before O'Brien abused  
7 Plaintiff.

9 43. Defendants, and each of them, failed to warn Plaintiff Joseph W. of the dangers  
10 associated with Defendant Thomas J. O'Brien and, as a result of their negligence and  
11 failure to warn, Plaintiff Joseph W. was sexually abused as a minor.

13 44. Defendants, by and through their agents, servants and employees, knew or  
14 reasonably should have known of Thomas J. O'Brien's and Defendants' other  
15 pedophilic and/or ephebophilic agents' dangerous and exploitive propensities and that  
16 they were unfit agents.

18 **FOURTH CAUSE OF ACTION**

19 **NEGLIGENT HIRING/RETENTION**

20 **(Against All Defendants)**

21 45. Plaintiff incorporates all paragraphs of this Complaint as if full set forth herein.

22 46. Defendants had a duty not to hire and/or retain Thomas J. O'Brien and  
23 Defendants' other pedophilic and/or ephebophilic agents given their dangerous and  
24 exploitive propensities.  
25  
26  
27  
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1 47. Defendants, and each of them, were negligent in their hiring and retention of  
2 Defendant Thomas J. O'Brien and, as a result of their negligence, Plaintiff Joseph W.  
3 was sexually abused as a minor.  
4

5 **FIFTH CAUSE OF ACTION**

6 **FRAUD**

7 **(Against All Defendants)**

8 48. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set  
9 forth herein.

10 49. Defendants knew and/or had reason to know of the sexual misconduct of O'Brien  
11 and Defendants' other pedophilic and/or ephebophilic agents.  
12

13 50. Defendants misrepresented, concealed or failed to disclose information relating  
14 to sexual misconduct of O'Brien and Defendants' other pedophilic and/or ephebophilic  
15 agents as described herein, and Defendants continue to misrepresent, conceal, and fail  
16 to disclose information relating to sexual misconduct of O'Brien and Defendants' other  
17 pedophilic and/or ephebophilic agents as described herein.  
18

19 51. Defendants made affirmative representations, regarding O'Brien's fitness to  
20 perform his ministry, presenting a foreseeable and substantial risk of significant harm to  
21 an employer or a third person. The affirmative representations included granting  
22 O'Brien faculties to perform his ministry, without limitations or restrictions, and thereby  
23 notifying other diocese in writing that he was a member in good standing. Both before  
24 and after these affirmative representations, Defendants knew that they misrepresented,  
25 concealed or failed to disclose information relating to sexual misconduct of O'Brien and  
26 Defendants' other pedophilic and/or ephebophilic agents.  
27  
28

1 52. Plaintiff justifiably relied upon Defendants for information relating to sexual  
2 misconduct of O'Brien and Defendants' other pedophilic and/or ephebophilic agents.  
3 Plaintiff further justifiably relied upon Defendants not to fail to disclose negative  
4 information regarding O'Brien where they made an affirmative representation, regarding  
5 O'Brien's fitness for employment, in positions that included working with children,  
6 presenting a foreseeable and substantial risk of significant harm to an employer or a  
7 third person.  
8

9 53. Defendants, with the intent to conceal and defraud, did misrepresent, conceal or  
10 fail to disclose information relating to the sexual misconduct of O'Brien and Defendants'  
11 other pedophilic and/or ephebophilic agents.  
12

13 54. As a direct result of Defendants' fraud, Plaintiff has suffered, and continues to  
14 suffer great pain of mind and body, shock, emotional distress, physical manifestations  
15 of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and  
16 loss of enjoyment of life; has suffered and continues to suffer spiritually; was prevented  
17 and will continue to be prevented from performing Plaintiff's daily activities and obtaining  
18 the full enjoyment of life; has sustained and will continue to sustain loss of earnings and  
19 earning capacity; and/or has incurred and will continue to incur expenses for medical  
20 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  
22 the jurisdictional minimum of this Court.  
23  
24

25 55. In addition, when Plaintiff discovered the fraud of Defendants, and continuing  
26 thereafter, Plaintiff experienced recurrences of the above-described injuries. In  
27 addition, when Plaintiff finally discovered the fraud of Defendants, and continuing  
28

1 thereafter, Plaintiff experienced extreme and severe mental and emotional distress that  
2 Plaintiff had been the victim of Defendants' fraud; that Plaintiff had not been able to help  
3 other minors being molested because of the fraud; and that Plaintiff had not been able  
4 because of the fraud to receive timely medical treatment needed to deal with the  
5 problems Plaintiff had suffered and continues to suffer as a result of the molestations.  
6

7 **SIXTH CAUSE OF ACTION**

8 **FIDUCIARY/CONFIDENTIAL RELATIONSHIP FRAUD**

9 **AND CONSPIRACY TO COMMIT FRAUD**

10 **(Against All Defendants)**

11  
12 56. Plaintiff incorporates all paragraphs of this First Amended Complaint as full set  
13 forth herein.

14 57. Because of Plaintiff's young age, and because of the status of O'Brien as an  
15 authority figure to Plaintiff, Plaintiff was vulnerable to O'Brien. O'Brien sought Plaintiff  
16 out, and was empowered by and accepted Plaintiff's vulnerability. Plaintiff's  
17 vulnerability also prevented Plaintiff from effectively protecting himself.  
18

19 58. By holding O'Brien and Defendants' other pedophilic and/or ephebophilic agents  
20 out as a qualified Roman Catholic clergy, religious brothers, religious instructors,  
21 counselors, school administrators, school teachers, surrogate parents, spiritual mentors,  
22 emotional mentors, medical services providers and/or care givers, and/or other authority  
23 figures, and by undertaking the religious and/or secular instruction and/or spiritual and  
24 emotional counseling of Plaintiff, the Defendants held special positions of trust and  
25 entered into a fiduciary and/or confidential relationship with the minor Plaintiff.  
26  
27  
28

1 59. Having a fiduciary and/or confidential relationship, the Defendants had the duty  
2 to obtain and disclose information relating to sexual misconduct of O'Brien and  
3 Defendants' other pedophilic and/or ephebophilic agents.  
4

5 60. Defendants misrepresented, concealed or failed to disclose information relating  
6 to sexual misconduct of O'Brien and Defendants' other pedophilic and/or ephebophilic  
7 agents, and the Defendants continued to misrepresent, conceal, and/or fail to disclose  
8 information relating to sexual misconduct of O'Brien and Defendants' other pedophilic  
9 and/or ephebophilic agents as described herein.  
10

11 61. The Defendants knew that they misrepresented, concealed or failed to disclose  
12 information relating to sexual misconduct of O'Brien and Defendants' other pedophilic  
13 and/or ephebophilic agents.  
14

15 62. Plaintiff justifiably relied upon the Defendants for information relating to sexual  
16 misconduct of O'Brien and Defendants' other pedophilic and/or ephebophilic agents.  
17

18 63. The Defendants, in concert with each other and with the intent to conceal and  
19 defraud, conspired and came to a meeting of the minds whereby they would  
20 misrepresent, conceal or fail to disclose information relating to the sexual misconduct of  
21 O'Brien and/or Defendants' other pedophilic and/or ephebophilic agents.  
22

23 64. By so concealing, the Defendants committed at least one act in furtherance of  
24 the conspiracy.  
25

26 65. As a direct result of the Defendants' fraud and conspiracy, Plaintiff has suffered,  
27 and continues to suffer great pain of mind and body, shock, emotional distress, physical  
28 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually;

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

8 **SEVENTH CAUSE OF ACTION**

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

10 **(Against All Defendants)**

11  
12 66. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set  
13 forth herein.

14 67. Because of Plaintiff's young age, and because of the status of O'Brien as an  
15 authority figure to Plaintiff, Plaintiff was vulnerable to O'Brien. O'Brien sought Plaintiff out,  
16 and was empowered by and accepted Plaintiff's vulnerability. Plaintiff's vulnerability also  
17 prevented Plaintiff from effectively protecting himself.  
18

19 68. By holding O'Brien and Defendants' other pedophilic and/or ephebophilic agents  
20 out as a qualified Roman Catholic clergy, religious brothers, religious instructors,  
21 counselors, school administrators, school teachers, surrogate parents, spiritual mentors,  
22 emotional mentors, medical services providers and/or care givers, and/or any other  
23 authority figure, by allowing O'Brien to have custody and control of and/or contact with  
24 the Plaintiff, and by undertaking the religious and/or secular instruction and/or spiritual  
25 and/or emotional counseling and/or medical care of Plaintiff, the Defendants entered into  
26 a fiduciary and/or confidential relationship with the minor Plaintiff.  
27  
28



1 69. Defendants, and each of them, committed Fraud and breached fiduciaries duties  
2 owed to Plaintiff Joseph W. and, as a result, Plaintiff Joseph W. was sexually abused as  
3 a minor.

4  
5 70. As a direct result of the Defendants' breach of their fiduciary duty, Plaintiff has  
6 suffered, and continues to suffer great pain of mind and body, shock, emotional distress,  
7 physical manifestations of emotional distress, embarrassment, loss of self-esteem,  
8 disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
9 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
10 daily activities and obtaining the full enjoyment of life; has sustained and will continue to  
11 sustain loss of earnings and earning capacity; and/or has incurred and will continue to  
12 incur expenses for medical and psychological treatment, therapy, and counseling. As a  
13 proximate result of these injuries, Plaintiff has suffered general and special damages in  
14 an amount in excess of the jurisdictional minimum of this Court.  
15

16  
17 71. Defendants, and each of them, committed conspiracy with regard to the dangers  
18 associated with Defendant Thomas J. O'Brien and, as a result, Plaintiff Joseph W. was  
19 sexually abused as a minor.

20  
21 **EIGHTH CAUSE OF ACTION**

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

23 **(Against All Defendants)**

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

26 73. The Defendants breached their duty to take reasonable protective measures to  
27 protect Plaintiff and other minor parishioners and/or students from the risk of childhood  
28 sexual abuse by O'Brien and/or Defendants' other pedophilic and/or epehebophilic

1 agents, such as the failure to properly warn, train, or educate Plaintiff, his parents, the  
2 Defendants' agents, employees and volunteers, and other minor parishioners and/or  
3 students about how to avoid such a risk and/or defend himself or herself if necessary.  
4 The Defendants' conduct was wanton and reckless and/or evidenced a conscious  
5 disregard for the rights and safety of Plaintiff and other children.  
6

7 74. Defendants, and each of them, negligently failed to warn, train or educate  
8 Plaintiff with regard to Defendant Thomas J. O'Brien and, as a result, Plaintiff Joseph  
9 W. was sexually abused as a minor.  
10

11 **NINTH CAUSE OF ACTION**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

12 **(Against All Defendants)**

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

16 76. Defendants, and each of them, through their actions described above, negligently  
17 and intentionally caused Plaintiff Joseph W. to suffer severe emotional distress.

18 77. Defendants' conduct was extreme and outrageous and was intentional and/or  
19 wanton and reckless with a conscious disregard for the rights and safety of Plaintiff and  
20 other children. Defendants knew or should have known O'Brien and Defendants' other  
21 pedophilic and/or ephhebophilic agents were spending time, and would continue to  
22 spend time in the future, in the company of and assaulting numerous children, including  
23 Plaintiff, around Maricopa County, and other locations, including on school grounds, in  
24 the parishes, and in O'Brien's rooms. Defendants also knew or should have known  
25 O'Brien and Defendants' other pedophilic and/or ephhebophilic agents were high risks to  
26 all children as Defendants had received numerous complaints and other notice of prior  
27  
28

1 acts of childhood sexual abuse by O'Brien and Defendants' other pedophilic and/or  
2 ephebophilic agents, and had sent O'Brien and/or Defendants' other pedophilic and/or  
3 ephebophilic agents for treatment for their pedophilia, prior to and after assigning them  
4 to work at Defendant Parish and/or Defendant School. Given their knowledge of  
5 numerous prior acts of abuse by O'Brien and Defendants' other pedophilic and/or  
6 ephebophilic agents, Defendants knew or should have known that every child exposed  
7 to O'Brien and Defendants' other pedophilic and/or ephebophilic agents, including  
8 Plaintiff, was substantially certain to be assaulted by O'Brien and Defendants' other  
9 pedophilic and/or ephebophilic agents. Defendants knew or should have known, and  
10 had the opportunity to learn of, the intentional and malicious conduct of O'Brien and  
11 Defendants' other pedophilic and/or ephebophilic agents, and thereby ratified and joined  
12 in said conduct by failing to terminate, discharge, or at least discipline O'Brien and  
13 Defendants' other pedophilic and/or ephebophilic agents after learning of their  
14 propensities, and/or by failing to warn anyone of O'Brien's and Defendants' other  
15 pedophilic and/or ephebophilic agents propensities, and/or by failing to prevent them  
16 from having contact with children, and/or by making affirmative representations to future  
17 employers regarding O'Brien's and Defendants' other pedophilic and/or ephebophilic  
18 agents fitness for employment while failing to disclose negative information about these  
19 men. The conduct of Defendants in confirming, concealing and ratifying that conduct  
20 was done with knowledge that the emotional and physical distress of Plaintiff and other  
21 children exposed to these men would thereby increase, and was done with a wanton  
22 and reckless disregard of the consequences to Plaintiff and other children in their  
23 custody and control.

1 78. As a result of Defendants' conduct, Plaintiff experienced and continues to  
2 experience severe emotional distress resulting in bodily harm.

3 **TENTH CAUSE OF ACTION**

4 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

5 **(Against All Defendants)**

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

9 80. Defendants knew or should have known that their failure to exercise reasonable  
10 care in the selection, approval, employment, supervision and transfer to other dioceses  
11 or archdioceses of O'Brien and Defendants' other pedophilic and/or ephebophilic  
12 agents, and their failure to warn anyone of the propensities of these men after making  
13 affirmative representations about their fitness for employment, for positions that  
14 included working with children, to current or future employers, would cause severe  
15 emotional distress to Plaintiff and other children exposed to O'Brien. Because of the  
16 foreseeability of sexual assaults by O'Brien and Defendants' other pedophilic and/or  
17 ephebophilic agents against Plaintiff and other children, Defendants breached their duty  
18 of care in engaging in the conduct referred to in the preceding paragraphs. Defendants'  
19 conduct was wanton and reckless and/or evidenced a conscious disregard for the rights  
20 and safety of Plaintiff and other children.

21 81. The Defendants also knew or should have known that their failure to exercise  
22 reasonable care in providing adequate supervision to Plaintiff and other children in their  
23 custody and control, despite the fact they knew or should have known of the threat to  
24 children posed by O'Brien and Defendants' other pedophilic and/or ephebophilic agents,  
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1 would cause Plaintiff severe emotional distress. Defendants also knew or should have  
2 known that after making affirmative representations about their fitness for employment,  
3 for positions that included working with children, Defendants' failure to disclose  
4 information relating to sexual misconduct of O'Brien and Defendants' other pedophilic  
5 and/or ephebophilic agents as described herein would cause Plaintiff and other children  
6 exposed to O'Brien severe emotional distress and subject them to further assaults.

7  
8 Because of the foreseeability of sexual assaults by O'Brien and Defendants' other  
9 pedophilic and/or ephebophilic agents against Plaintiff and other children, the  
10 Defendants breached their duty to exercise reasonable care in failing to provide  
11 adequate supervision to Plaintiff and other children in their custody and control.  
12

13 Additionally, Defendants breached their duty to exercise reasonable care in failing to  
14 disclose information to Plaintiff; to his family; to future or current employers to whom  
15 Defendants made affirmative representations about O'Brien's and their other agents'  
16 fitness for employment, for positions that included working with children; and to the  
17 general public, relating to sexual misconduct of O'Brien and Defendants' other  
18 pedophilic and/or ephebophilic agents.  
19

20 82. Finally, Defendants knew or should have known that their creation and  
21 continuance of the Public Nuisance set forth in the preceding paragraphs would cause  
22 Plaintiff and other children severe emotional distress. Because of the foreseeability of  
23 sexual assaults by O'Brien and Defendants' other pedophilic and/or ephebophilic agents  
24 against Plaintiff and other children as a result of this conduct, Defendants breached  
25 their duty of care in creating and continuing the Public Nuisance referred to in the  
26 preceding paragraphs.  
27  
28

1 83. Plaintiff experienced and continues to experience severe emotional distress  
2 resulting in bodily harm.

3 84. As a result of the above-described conduct, Plaintiff has suffered, and continues  
4 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  
8 activities and obtaining the full enjoyment of life; has sustained and will continue to  
9 sustain loss of earnings and earning capacity; and/or has incurred and will continue to  
10 incur expenses for medical and psychological treatment, therapy, and counseling. As a  
11 proximate result of these injuries, Plaintiff has suffered general and special damages in  
12 an amount in excess of the jurisdictional minimum of this Court.

15 85. When Plaintiff finally discovered the negligent misrepresentations of Defendants,  
16 and continuing thereafter, Plaintiff experienced extreme and severe mental and  
17 emotional distress that Plaintiff had been the victim of Defendants' negligent  
18 misrepresentations; that Plaintiff had not been able to help other minors being molested  
19 because of the negligent misrepresentations; and that Plaintiff had not been able  
20 because of the negligent misrepresentations and failure to disclose to receive timely  
21 medical treatment needed to deal with the problems Plaintiff had suffered and continues  
22 to suffer as a result of the sexual abuse.  
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1 **ELEVENTH CAUSE OF ACTION**

2 **FRAUD AND DECEIT**

3 **(Against All Defendants)**

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

7 87. O'Brien and Defendants' other pedophilic and/or ephebophilic agents held  
8 themselves out to Plaintiff as Roman Catholic Priests, religious brothers, religious  
9 instructors, counselors, school administrators, school teachers, surrogate parents,  
10 spiritual mentors, emotional mentors, medical services providers and/or care givers,  
11 and/or other authority figures. O'Brien and Defendants' other pedophilic and/or  
12 ephebophilic agents represented to Plaintiff and Plaintiff's parents that they would  
13 counsel and guide Plaintiff with his educational, spiritual, and/or emotional needs.  
14

15 88. These representations were made by O'Brien and Defendants' other pedophilic  
16 and/or ephebophilic agents with the intent and for the purpose of inducing Plaintiff and  
17 Plaintiff's parents to entrust the educational, spiritual, sexual, emotional and physical  
18 well-being of Plaintiff with O'Brien and Defendants' other pedophilic and/or ephebophilic  
19 agents.  
20

21 89. O'Brien and Defendants' other pedophilic and/or ephebophilic agents  
22 misrepresented, concealed or failed to disclose information relating to their true  
23 intentions to Plaintiff and Plaintiff's parents when they entrusted Plaintiff to his care,  
24 which were to sexually molest and abuse Plaintiff. Plaintiff justifiably relied upon  
25 O'Brien's and Defendants' other pedophilic and/or ephebophilic agents' representations.  
26  
27  
28

1 90. O'Brien and Defendants' other pedophilic and/or ephebophilic agents were  
2 employees, agents, and/or representatives of the Defendants. At the time they  
3 fraudulently induced Plaintiff and Plaintiff's parents to entrust the care and physical  
4 welfare of Plaintiff to O'Brien and Defendants' other pedophilic and/or ephebophilic  
5 agents, O'Brien and Defendants' other pedophilic and/or ephebophilic agents were  
6 acting within the course and scope of their employment with the Defendants.  
7

8 91. The Defendants are vicariously liable for the fraud and deceit of O'Brien and the  
9 Defendants' other agents.  
10

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

22 93. In addition, when Plaintiff finally discovered the fraud of the Defendants, and  
23 continuing thereafter, Plaintiff experienced recurrences of the above-described injuries.  
24 In addition, when Plaintiff finally discovered the fraud of the Defendants, and continuing  
25 thereafter, Plaintiff experienced extreme and severe mental and emotional distress that  
26 Plaintiff had been the victim of the Defendants' fraud; that Plaintiff had not been able to  
27  
28



1 help other minors being molested because of the fraud; and that Plaintiff had not been  
2 able because of the fraud to receive timely medical treatment needed to deal with the  
3 problems Plaintiff had suffered and continues to suffer as a result of the molestations.  
4

5 **TWELFTH CAUSE OF ACTION**

6 **PREMISES LIABILITY**

7 **(Against All Defendants)**

8 94. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set  
9 forth herein.

10 95. At all times herein mentioned, Defendant Roman Catholic Diocese of Phoenix  
11 and/or Defendant Roman Catholic Bishop of Phoenix and/or Defendant St. Thomas  
12 Aquinas Roman Catholic Church and/or Defendant St. Thomas Aquinas Roman  
13 Catholic School and/or Defendant St. Thomas Aquinas Mission Catholic Church in  
14 Litchfield Park and/or Defendant St. Vincent de Paul Roman Catholic Parish Phoenix  
15 and/or Defendant St. Vincent de Paul Catholic Church and/or Defendant St. Vincent de  
16 Paul Catholic School were in possession of the properties where the Plaintiff was  
17 groomed and assaulted by O'Brien, and had the right to manage, use and control those  
18 properties.  
19  
20

21 96. At all times herein mentioned, Defendant Roman Catholic Diocese of Phoenix  
22 and/or Defendant Roman Catholic Bishop of Phoenix and/or Defendant St. Thomas  
23 Aquinas Roman Catholic Church and/or Defendant St. Thomas Aquinas Roman  
24 Catholic School and/or Defendant St. Thomas Aquinas Mission Catholic Church in  
25 Litchfield Park and/or Defendant St. Vincent de Paul Roman Catholic Parish Phoenix  
26 and/or Defendant St. Vincent de Paul Catholic Church and/or Defendant St. Vincent de  
27  
28

1 Paul Catholic School knew that O'Brien and Defendants' other pedophilic and/or  
2 ephebophilic agents had a history of committing sexual assaults against children, and  
3 that any child at, among other locations in Maricopa County, Defendant St. Thomas  
4 Aquinas Roman Catholic Church and/or Defendant St. Thomas Aquinas Roman  
5 Catholic School and/or Defendant St. Thomas Aquinas Mission Catholic Church in  
6 Litchfield Park and/or Defendant St. Vincent de Paul Roman Catholic Parish Phoenix  
7 and/or Defendant St. Vincent de Paul Catholic Church and/or Defendant St. Vincent de  
8 Paul Catholic School was at risk to be sexually assaulted by O'Brien and Defendants'  
9 other pedophilic and/or ephebophilic agents.  
10  
11

12 97. The Defendants knew or should have known that their agents at Defendant St.  
13 Thomas Aquinas Roman Catholic Church and/or Defendant St. Thomas Aquinas  
14 Roman Catholic School and/or Defendant St. Thomas Aquinas Mission Catholic Church  
15 in Litchfield Park and/or Defendant St. Vincent de Paul Roman Catholic Parish Phoenix  
16 and/or Defendant St. Vincent de Paul Catholic Church and/or Defendant St. Vincent de  
17 Paul Catholic School had a history of grooming of and/or sexual assaults against  
18 children committed by O'Brien and/or Defendants' other pedophilic and/or ephebophilic  
19 agents and that any child at, among other locations in Maricopa County, Defendant St.  
20 Thomas Aquinas Roman Catholic Church and/or Defendant St. Thomas Aquinas  
21 Roman Catholic School and/or Defendant St. Thomas Aquinas Mission Catholic Church  
22 in Litchfield Park and/or Defendant St. Vincent de Paul Roman Catholic Parish Phoenix  
23 and/or Defendant St. Vincent de Paul Catholic Church and/or Defendant St. Vincent de  
24 Paul Catholic School, was at risk to be sexually assaulted. It was foreseeable to the  
25 Defendants that O'Brien and Defendants' other pedophilic and/or ephebophilic agents  
26  
27  
28

1 would sexually assault children if they continued to allow O'Brien and/or Defendants'  
2 other pedophilic and/or ephebophilic agents to teach, supervise, instruct, care for, and  
3 have custody and control of and/or contact with children.  
4

5 98. At all times herein mentioned, the Defendants knew or should have known  
6 O'Brien and Defendants' other pedophilic and/or ephebophilic agents were repeatedly  
7 committing sexual assaults against children.

8 99. It was foreseeable to the Defendants that the sexual assaults being committed by  
9 O'Brien and Defendants' other pedophilic and/or ephebophilic agents would continue if  
10 the Defendants continued to allow O'Brien and Defendants' other pedophilic and/or  
11 ephebophilic agents to teach, supervise, instruct, care for, conduct physical  
12 examinations of, and have custody of and/or contact with young children.  
13

14 100. Because it was foreseeable that the sexual assaults being committed by O'Brien  
15 and Defendants' other pedophilic and/or ephebophilic agents would continue if the  
16 Defendants continued to allow them to teach, supervise, instruct, care for, conduct  
17 physical examinations of, and have custody of and/or contact with young children, the  
18 Defendants owed a duty of care to all children, including Plaintiff, exposed to O'Brien  
19 and/or Defendants' other pedophilic and/or ephebophilic agents. The Defendants also  
20 owed a heightened duty of care to all children, including Plaintiff, because of their young  
21 age.  
22

23 101. By allowing O'Brien and/or Defendants' other pedophilic and/or ephebophilic  
24 agents to teach, supervise, instruct, care for, conduct physical examinations of, and  
25 have custody of and/or contact with young children, and by failing to warn children and  
26 their families of the threat posed by O'Brien and Defendants' other pedophilic and/or  
27  
28

1 ephebophilic agents, the Defendants breached their duty of care to all children,  
2 including Plaintiff.

3 102. The Defendants negligently used and managed Defendant St. Thomas Aquinas  
4 Roman Catholic Church and/or Defendant St. Thomas Aquinas Roman Catholic School  
5 and/or Defendant St. Thomas Aquinas Mission Catholic Church in Litchfield Park and/or  
6 Defendant St. Vincent de Paul Roman Catholic Parish Phoenix and/or Defendant St.  
7 Vincent de Paul Catholic Church and/or Defendant St. Vincent de Paul Catholic School,  
8 and created a dangerous condition and an unreasonable risk of harm to children by  
9 allowing O'Brien and Defendants' other pedophilic and/or ephebophilic agents to teach,  
10 supervise, instruct, care for, conduct physical examinations of, and have custody of  
11 and/or contact with young children at, among other locations, Defendant St. Thomas  
12 Aquinas Roman Catholic Church and/or Defendant St. Thomas Aquinas Roman  
13 Catholic School and/or Defendant St. Thomas Aquinas Mission Catholic Church in  
14 Litchfield Park and/or Defendant St. Vincent de Paul Roman Catholic Parish Phoenix  
15 and/or Defendant St. Vincent de Paul Catholic Church and/or Defendant St. Vincent de  
16 Paul Catholic School.

17  
18 103. As a result of the dangerous conditions created by the Defendants, numerous  
19 children were sexually assaulted by O'Brien and Defendants' other pedophilic and/or  
20 ephebophilic agents.

21  
22 104. The dangerous conditions created by the Defendants were the proximate cause  
23 of Plaintiff's injuries and damages.

24  
25 105. As a result of these dangerous conditions, Plaintiff has suffered, and continues to  
26 suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
27

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

9  
10 **THIRTEENTH CAUSE OF ACTION**

11 **CHILDHOOD SEXUAL ABUSE**

12 **(Against Defendant Thomas J. O'Brien)**

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

15 107. While Plaintiff was a minor and in the custody and/or under the control and  
16 supervision of Defendant Thomas J. O'Brien, Defendant Thomas J. O'Brien intentionally  
17 sexually molested and assaulted Plaintiff.  
18

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

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

3 109. In doing the acts complained of herein, Defendant O'Brien acted intentionally,  
4 maliciously and with conscious disregard for the rights of Plaintiff, thereby entitling  
5 Plaintiff to punitive damages in an amount to be established at trial.  
6

7 **FOURTEENTH CAUSE OF ACTION**

8 **SEXUAL BATTERY**

9 **(Against Defendant O'Brien)**

10 110. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set  
11 forth herein.  
12

13 111. In doing the acts of childhood sexual abuse specified herein above, Defendant  
14 O'Brien intentionally touched an intimate part of Plaintiff in a sexually offensive manner  
15 with the intent to harm or offend him, and further acted in such a manner as to cause  
16 Plaintiff to have an imminent apprehension of such contact. Plaintiff did not consent  
17 and could not legally have consented to be so touched by Defendant O'Brien. Plaintiff  
18 was harmed and offended by his conduct.  
19

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

1 and psychological treatment, therapy, and counseling. As a proximate result of these  
2 injuries, Plaintiff has suffered general and special damages in an amount in excess of  
3 the jurisdictional minimum of this Court.  
4

5 **DAMAGES**

6 113. As a result of the above-described conduct of the Defendants, and each of them,  
7 Plaintiff Joseph W. has suffered and continues to suffer great pain of mind and body,  
8 shock, severe and extreme emotional distress, physical manifestations of emotional  
9 distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of  
10 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will  
11 continue to be prevented from performing Plaintiff's daily activities and obtaining the full  
12 enjoyment of life; has sustained and will continue to sustain loss of earnings and  
13 earning capacity; and/or has incurred and will continue to incur expenses for medical  
14 and psychological treatment, therapy and counseling. As a proximate result of these  
15 injuries, Plaintiff has suffered general and special damages in an amount in excess of  
16 the jurisdictional limit of this Court.  
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20 WHEREFORE, Plaintiff prays for judgment against the Defendants, and each of  
21 them, in an amount which will compensate them for his injuries/damages sustained herein,  
22 for punitive or exemplary damages, for the costs of this action, and for such other and  
23 further relief as the Court deems just and reasonable.  
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26 Dated this 10th of January, 2017.  
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MERCALDO LAW FIRM

/s/ Carlo N. Mercaldo

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Carlo N. Mercaldo  
Attorney for Plaintiff

Original electronically filed  
and delivered by TurboCourt  
this 10th day of January, to:

Hon. David K. Udall

Copy of the foregoing emailed and  
delivered by U.S. Mail this 10th  
day of January, 2017, to:

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/s/ Laura L. Contreras, ACP