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5 Attorneys for Plaintiff, JOHN MT DOE.

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7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

11 JOHN MT DOE, and individual,  
12 Plaintiff,

13 vs.

14 THE ROMAN CATHOLIC BISHOP OF  
STOCKTON, a corporation sole; SAINT  
15 ANDREW PARISH, a business entity of  
form unknown; MOKELUMNE HILL  
16 CHURCH, a business entity of form  
unknown; BISHOP STEPHEN BLAIRE,  
17 an individual; MONSIGNOR RICHARD  
RYAN, an individual; FATHER  
18 MICHAEL KELLY, an individual; and  
DOES 1 through 100, inclusive,

19 Defendants.

Case No.: \_\_\_\_\_  
Judge: \_\_\_\_\_  
Dept.: \_\_\_\_\_

**COMPLAINT FOR DAMAGES FOR:**

- 1) **NEGLIGENCE;**
- 2) **NEGLIGENT SUPERVISION;**
- 3) **NEGLIGENT  
HIRING/RETENTION;**
- 4) **NEGLIGENT FAILURE TO WARN,  
TRAIN OR EDUCATE;**
- 5) **CONSTRUCTIVE FRAUD (C.C. §  
1573);**
- 6) **INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS;**
- 7) **SEXUAL BATTERY (C.C. § 1708.5);**
- 8) **ASSAULT;**
- 9) **SEXUAL HARASSMENT (C.C. §  
51.9);**
- 10) **GENDER VIOLENCE (C.C. § 52.4);**

**[DEMAND FOR JURY TRIAL]**

**[Filed Pursuant to C.C.P. § 340.1(a)]**

25 **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

26 **COMES NOW**, Plaintiff JOHN MT DOE, who complains and alleges as follows:

27 ///

28 ///



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1 RICHARD RYAN and FATHER MICHAEL KELLY. He is an employee and agent of the  
2 DIOCESE OF STOCKTON and DOES 1-100, under their control and supervision.

3 6. Defendant MONSIGNOR RICHARD RYAN is an individual currently residing in  
4 the County of San Joaquin, City of Stockton, California. He was born in Ireland, and in 1973, was  
5 ordained a priest of the Roman Catholic Church for the DIOCESE OF STOCKTON. He has  
6 served as a priest of the DIOCESE OF STOCKTON since 1973, holding several positions. He  
7 currently serves as the Vicar General of the DIOCESE OF STOCKTON, and in this position,  
8 assists BISHOP STEPHEN BLAIRE in carrying out his duties as head of the DIOCESE OF  
9 STOCKTON. He is both friend and supervisor of FATHER MICHAEL KELLY. He is an  
10 employee and agent of the DIOCESE OF STOCKTON, BISHOP STEPHEN BLAIRE and DOES  
11 1-100, under their control and supervision.

12 7. FATHER MICHAEL KELLY is an individual whose last known residence was in  
13 Ireland. He was born in Ireland, and in 1973, was ordained a priest of the Roman Catholic Church  
14 for the DIOCESE OF STOCKTON along with MONSIGNOR RICHARD RYAN. After  
15 ordination, FATHER MICHAEL KELLY and MONSIGNOR RICHARD RYAN traveled from  
16 Ireland to Stockton to begin serving as Roman Catholic Priests for the DIOCESE OF  
17 STOCKTON. At such time he was an employee and agent of the DIOCESE OF STOCKTON,  
18 ST. ANDREW, BISHOP STEPHEN BLAIRE, MONSIGNOR RYAN and DOES 1-100, under  
19 their control and supervision, filling such functions as priest, teacher, spiritual adviser and mentor  
20 to minor and adult parishioners of the DIOCESE OF STOCKTON, MOKELUMNE HILL  
21 CHURCH and ST. ANDREW. In Spring of 2012, FATHER MICHAEL KELLY was found  
22 guilty of sexually abusing a minor parishioner of the DIOCESE OF STOCKTON from 1984-  
23 1985 by a civil jury of his peers in the Superior Court of San Joaquin County.

24 8. At all times mentioned herein, each and every named and "DOE" defendant was  
25 an employee and agent of all named defendant and "DOE" defendant, under their complete  
26 control and supervision. Defendants engaged in, joined in and conspired with FATHER  
27 MICHAEL KELLY to carry out and conceal the sexual abuse of Plaintiff as alleged herein.  
28

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1           9. Defendants DOES 1 through 100 ("DOE Defendants") are sued herein under  
2 fictitious names because at this time Plaintiff is ignorant as to their true identities and capacities,  
3 whether individual, corporate, associate, or otherwise. When their true identities and capacities  
4 are ascertained, Plaintiffs will request leave of Court to amend this Complaint to state their true  
5 names. Plaintiff is informed and believes, and on that basis alleges, that at all times mentioned  
6 herein, each fictitiously named Defendant was responsible for the injuries herein alleged, and that  
7 Plaintiffs' damages were proximately caused by all said DOE Defendants.

8           10. Defendants DIOCESE OF STOCKTON, ST. ANDREW PARISH,  
9 MOKELUMNE HILL CHURCH, BISHOP STEPHEN BLAIR, MONSIGNOR RICHARD  
10 RYAN, FATHER MICHAEL KELLY and DOES 1 through 100 are sometimes collectively  
11 referred to herein as "Defendants" or "All Defendants." Such collective reference refers to all  
12 specifically and fictitiously named defendants herein.

13           11. Plaintiff is informed and believes, and on that basis alleges, that at all times  
14 mentioned herein, there existed a unity of interest and ownership among defendants and each of  
15 them, such that any individuality and separateness between Defendants, and each of them, ceased  
16 to exist. Defendants and each of them, were the successors-in-interest and/or alter egos of the  
17 other defendants, and each of them, in that they purchased, controlled, dominated and operated  
18 each other without any separate identity, observation of formalities or other manner of division.  
19 To continue maintaining the facade of a separate and individual existence between and among  
20 Defendants, and each of them, would serve to perpetrate a fraud and an injustice.

21           12. Plaintiff is informed and believes, and on that basis alleges, that at all times  
22 mentioned herein, Defendants and each of them were the agents and employees of each and every  
23 other defendant. In doing the things hereinafter alleged, Defendants were acting within the course  
24 and scope of said alternative capacity, identity, agency and employment and were within the  
25 scope of their authority, whether actual or apparent.

26           13. Plaintiff is informed and believes, and on that basis alleges, that at all times  
27 mentioned herein, Defendants were the trustees, partners, servants, joint venturers, shareholders,  
28 contractors, and employees of each and every other Defendant, and the acts and omissions herein

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1 alleged were done by them, acting individually, through such capacity and within the scope of  
2 their authority, and with the permission and consent of each and every other Defendant and that  
3 said conduct was thereafter ratified by each and every other Defendant, and that each of them is  
4 jointly and severally liable to Plaintiff.

5 **FACTUAL ALLEGATIONS APPLICABLE TO ALL CLAIMS**

6 14. Plaintiff initially became a parishioner at MOKELUMNE HILL CHURCH in  
7 approximately 1994, when he was 6-years-old.

8 15. FATHER MICHAEL KELLY was appointed as the head pastor of ST. ANDREW  
9 PARISH in approximately 2000, and lived in the City of San Andreas, County of Calaveras at  
10 that time. He was assigned to that position by the DIOCESE OF STOCKTON and BISHOP  
11 STEPHEN BLAIRE, with the knowledge and agreement of MONSIGNOR RICHARD RYAN.  
12 While pastor of ST. ANDREW PARISH, FATHER MICHAEL KELLY'S employment duties  
13 included providing for the educational, physical and emotional needs and well-being of  
14 parishioners of the parish, which included acting as Pastor at ST. ANDREW's "Mission Church,"  
15 MOKELUMNE HILL CHURCH in nearby Mokelumne Hill, California, where Plaintiff and his  
16 parents worshiped. Plaintiff was an altar server at MOKELUMNE HILL CHURCH when  
17 FATHER MICHAEL KELLY arrived, and it is under these circumstances that Plaintiff came to  
18 be under the direction and control of FATHER MICHAEL KELLY, who used his position of  
19 authority and trust to molest and sexually abuse Plaintiff.

20 16. As a parishioner and altar boy at MOKELUMNE HILL CHURCH while  
21 FATHER MICHAEL KELLY was the pastor, the minor Plaintiff was under FATHER  
22 MICHAEL KELLY's direct supervision, control and care, which created a special, confidential  
23 and fiduciary relationship between Plaintiff and FATHER MICHAEL KELLY. Because of such  
24 relationship, FATHER MICHAEL KELLY owed Plaintiff a duty of care. Additionally, as the  
25 employers and supervisors of FATHER MICHAEL KELLY, with knowledge that he was in  
26 contact with and supervising children, Defendants DIOCESE OF STOCKTON, ST. ANDREW  
27 PARISH, MOKELUMNE HILL CHURCH, BISHOP STEPHEN BLAIRE and MONSIGNOR  
28

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1 RICHARD RYAN were also in a special, confidential and fiduciary relationship with Plaintiff,  
2 owing him a duty of care.

3 17. Because of the duty of care owed to Plaintiff, Defendants had a duty to disclose to  
4 Plaintiff, Plaintiff's parents, and other parishioners of ST. ANDREW PARISH and  
5 MOKELUMNE HILL CHURCH that FATHER MICHAEL KELLY had previously been  
6 accused, by several individuals, on multiple occasions dating back to the 1970's, of engaging in  
7 sexual misconduct with minor parishioners of the DIOCESE OF STOCKTON. They also had a  
8 duty to disclose that FATHER MICHAEL KELLY had been sent for psychological evaluation,  
9 counseling and treatment as a result of these transgressions.

10 18. Defendants further had a duty to disclose to Plaintiff, his parents and other  
11 parishioners that in 1999, the DIOCESE OF STOCKTON, BISHOP STEPHEN BLAIRE and  
12 MONSIGNOR RICHARD RYAN sent FATHER MICHAEL KELLY for a psychological  
13 evaluation, which included an interview and testing. They had a duty to disclose that the  
14 California licensed psychologist who conducted the evaluation concluded, from the results: "**I do**  
15 **not believe that we are able to rule out the possibility that some underlying or latent**  
16 **pedophilic elements may exist in this case.**" They had a duty to disclose that the psychologist  
17 further advised: "**I believe it is prudent to recommend that, in addition to undergoing**  
18 **psychotherapy, he not minister to children alone or to families in which there are children.**"

19 The DIOCESE OF STOCKTON, BISHOP STEPHEN BLAIRE, MONSIGNOR RICHARD  
20 RYAN and FATHER MICHAEL KELLY, instead of disclosing FATHER MICHAEL KELLY  
21 was a danger to children of the DIOCESE OF STOCKTON, instead conspired to suppress and  
22 conceal this information, failing to disclose such and concealing it. Instead, they placed  
23 FATHER MICHAEL KELLY in a position of trust and authority as Pastor of MOKELUMNE  
24 HILL CHURCH, further concealing the past allegations, psychological testing and treatment by  
25 stating FATHER MICHAEL KELLY had been absent from ministry for "health reasons." By  
26 assigning FATHER MICHAEL KELLY as Pastor of MOKELUMNE HILL CHURCH, the  
27 DIOCESE OF STOCKTON, BISHOP STEPHEN BLAIRE and MONSIGNOR RICHARD  
28 RYAN represented to the community that FATHER MICHAEL KELLY was safe, trustworthy,

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1 and of high moral and ethical repute, such that parishioners need not worry about having them  
2 interact with, and supervise their minor children. BISHOP STEPHEN BLAIRE, MONSIGNOR  
3 RICHARD RYAN and FATHER MICHAEL KELLY did so in order to preserve their own public  
4 image and reputation, as well as that of the Roman Catholic Church and the DIOCESE OF  
5 ORANGE, so they could retain past parishioners and recruit new parishioners, thus allowing  
6 donations to continue flowing into their coffers for financial gain. The DIOCESE OF  
7 STOCKTON, BISHOP STEPHEN BLAIRE, MONSIGNOR RICHARD RYAN and FATHER  
8 MICHAEL KELLY also made a point of making substantial connections with members of the  
9 local law enforcement community, ingratiating themselves thereinto in furtherance of this  
10 conspiracy, so as to further their objective of shielding FATHER MICHAEL KELLY's abusive  
11 acts from the public and protecting him from criminal investigation and prosecution.

12 19. Defendants knew of FATHER MICHAEL KELLY's propensity and disposition to  
13 engage in sexual misconduct with minors before he sexually abused and molested Plaintiff, and  
14 knew of the probability that he would molest minors with whom he came into contact, such as  
15 Plaintiff.

16 20. Defendants failed to implement reasonable safeguards to avoid acts of unlawful  
17 sexual conduct by FATHER MICHAEL KELLY in the future, including avoiding placement of  
18 FATHER MICHAEL KELLY in a position where contact and interaction with children is an  
19 inherent function. Defendants ignored and suppressed the past sexual misconduct he had engaged,  
20 ignored the advice and warnings of psychologists who evaluated FATHER MICHAEL KELLY  
21 for such transgressions, and placed FATHER MICHAEL KELLY at MOKELUMNE HILL  
22 CHURCH, purposely chosen because of its remote location and low population, in order to  
23 squelch allegations of sexual misconduct lodged against him while allowing him to remain in  
24 ministry. It was also due, in part, to the fact that the DIOCESE OF STOCKTON was suffering  
25 from a shortage of priests at the time.

26 21. Prior to and during the abuse of Plaintiff, Defendants knew or had reason to know  
27 that FATHER MICHAEL KELLY would commit wrongful sexual acts with minors. This is  
28 because the DIOCESE OF STOCKTON, and in particular, BISHOP STEPHEN BLAIRE and

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1 MONSIGNOR RICHARD RYAN, possessed knowledge of numerous incidents of inappropriate  
2 sexual contact and conduct by FATHER MICHAEL KELLY with minors, including incidents on  
3 and off the physical premises owned and operated by the DIOCESE OF STOCKTON where  
4 FATHER MICHAEL KELLY would fondle children sexually and force them to play games from  
5 which he derived sexual gratification, well before FATHER MICHAEL KELLY was assigned to  
6 MOKELUMNE HILL CHURCH. Defendants knew that FATHER MICHAEL KELLY had  
7 previously violated his role as a priest, teacher, spiritual advisor and counselor of children,  
8 misusing his position of authority and trust to exploit and sexually abuse children. Despite such,  
9 they conspired to conceal such information from Plaintiff, his parents, law enforcement and  
10 parishioners of MOKELUMNE HILL CHURCH. Defendants ratified FATHER MICHAEL  
11 KELLY's prior sexual misconduct with minors by allowing him to remain in ministry and by  
12 specifically placing him into positions where he supervised and was in constant unsupervised  
13 contact with minors.

14 22. Because of the relationship between Plaintiff and Defendants, Defendants had an  
15 obligation and duty under law not to hide material facts and information about FATHER  
16 MICHAEL KELLY's past, and his deviant sexual behavior and propensities. Additionally,  
17 Defendants had an affirmative duty to inform, warn, and institute appropriate protective measures  
18 to safeguard minors who were reasonably likely to come in contact with FATHER MICHAEL  
19 KELLY. Defendants willfully refused to notify, give adequate warning and implement  
20 appropriate safeguards, thereby creating the peril that ultimately damaged Plaintiff.

21 23. Prior to Plaintiff's sexual abuse by FATHER MICHAEL KELLY, Defendants  
22 engaged in a pattern and practice of employing sexual abusers in the DIOCESE OF STOCKTON.  
23 Defendants concealed these facts from parishioners, their parents, the San Joaquin County  
24 Catholic community, the public at large and law enforcement.

25 24. As part of Defendants' conspiratorial and fraudulent attempt to hide FATHER  
26 MICHAEL KELLY's propensity to sexually abuse children, and prior sexual misconduct with  
27 children, from public scrutiny and criminal investigation, Defendants implemented various  
28



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1. measures designed to make FATHER MICHAEL KELLY's conduct harder to detect and ensure  
2 minors with whom he came into contact, such as Plaintiff, would be sexually abused, including:

- 3 a. Permitting FATHER MICHAEL KELLY to remain in a position of authority and  
4 trust after Defendants knew or had reason to know he was a molester of children;
- 5 b. Placing FATHER MICHAEL KELLY in a separate and secluded environment, at  
6 MOKELUMNE HILL CHURCH, including assigning him to duties that included  
7 hearing the confessions of minors, overseeing altar servers, and running  
8 counseling programs, youth programs, and church-sponsored trips and events,  
9 allowing FATHER MICHAEL KELLY to physically and sexually interact with  
10 the children, including Plaintiff;
- 11 c. Allowing FATHER MICHAEL KELLY unsupervised and un-controlled access to  
12 minors;
- 13 d. Holding out FATHER MICHAEL KELLY to Plaintiff, his parents and  
14 parishioners as a trustworthy and honest person of high ethical and moral repute  
15 who was capable and worthy of being granted unsupervised access to the children  
16 of MOKELUMNE HILL CHURCH;
- 17 e. Cloaking FATHER MICHAEL KELLY's prior sexual misconduct with children  
18 within the facade of normalcy, thereby disguising the nature of his sexual abuse  
19 and contact with minors;
- 20 f. Failing to take reasonable steps and to implement reasonable safeguards to avoid  
21 acts of unlawful sexual conduct by FATHER MICHAEL KELLY such as avoiding  
22 placement of FATHER MICHAEL KELLY in functions or environments in which  
23 his solitary contact with children was inherent;
- 24 g. Failing to put in place a system or procedure to supervise or monitor employees,  
25 volunteers and agents to insure they do not molest or abuse minors in Defendants'  
26 care.

27 25. By allowing FATHER MICHAEL KELLY to continue serving as a priest in the  
28 DIOCESE OF STOCKTON, and assigning him as Pastor of MOKELUMNE HILL CHURCH,  
the DIOCESE OF STOCKTON and specifically BISHOP STEPHEN BLAIRE and  
MONSIGNOR RICHARD RYAN allowed FATHER MICHAEL KELLY to maintain a position  
of respect and influence in the community. Defendants' conduct created a situation of peril that  
was not and could not be detected or appreciated by Plaintiff or his parents, as they were taught to  
trust and instill great confidence in Roman Catholic priests, through the tenets of the faith, and  
they had no reason to know of FATHER MICHAEL KELLY's concealed prior sexual  
misconduct with minors.

1           26.     The sexual harassment and abuse of Plaintiff by FATHER MICHAEL KELLY,  
2 outlined below, took place while FATHER MICHAEL KELLY was the Pastor of  
3 MOKELUMNE HILL CHURCH and Plaintiff and his family were parishioners there. FATHER  
4 MICHAEL KELLY was serving as an agent and employee of Defendants in his capacity and  
5 position as a priest, teacher, spiritual advisor and counselor:

- 6           a.     In his capacity as a priest and Pastor of MOKELUMNE HILL CHURCH,  
7 FATHER MICHAEL KELLY was given custody and supervision of minors,  
8 including Plaintiff. FATHER MICHAEL KELLY used this position to coerce  
9 children to concede to his sexual suggestions, using his authority and position of  
10 trust to exploit them physically and emotionally;
- 11           b.     For a period of time prior to FATHER MICHAEL KELLY's sexual abuse and  
12 harassment of Plaintiff, FATHER MICHAEL KELLY commenced the process of  
13 "grooming" Plaintiff for later abuse. During this period, beginning in or around  
14 2000, when Plaintiff was just ten years old, Plaintiff was a parishioner and altar  
15 boy under FATHER MICHAEL KELLY's direct supervision and control.  
16 FATHER MICHAEL KELLY began traveling to Plaintiff's home. Once there, he  
17 would request entry to the family home under the guise of providing the family  
18 spiritual guidance and support. Once there, he would wrestle with and tickle  
19 Plaintiff, grooming him for later abuse;
- 20           c.     Father MICHAEL KELLY'S physical sexual abuse of Plaintiff commenced in or  
21 around 2000, when Plaintiff was just ten years old. During this period, Plaintiff  
22 was an altar boy and parishioner under FATHER MICHAEL KELLY'S direct  
23 supervision and control. Using his position as a priest, FATHER MICHAEL  
24 KELLY would require that Plaintiff take his pants off while wearing his altar boy  
25 robes because FATHER MICHAEL KELLY did not like to see pants underneath  
26 the robes. While acting as an altar boy, Plaintiff was often alone with FATHER  
27 MICHAEL KELLY on church grounds, and on three different occasions,  
28 FATHER MICHAEL KELLY molested and raped Plaintiff;
- d.     During these occurrences, FATHER MICHAEL KELLY would approach Plaintiff  
from behind and place his hands inside the front "pockets" of the altar robes, and  
touch Plaintiff's bare inner thigh. While pressed against Plaintiff, Plaintiff could  
feel FATHER MICHAEL KELLY's erection pressed against him. FATHER  
MICHAEL KELLY would ask Plaintiff "can you feel me on you?" During one  
such occurrence, FATHER MICHAEL KELLY forcibly sodomized Plaintiff on  
Church grounds, causing Plaintiff to bleed from his anus. FATHER MICHAEL  
KELLY would also attempt to force Plaintiff's face into FATHER MICHAEL  
KELLY's crotch.
- e.     FATHER MICHAEL KELLY's sexual abuse and harassment of Plaintiff was  
done for his personal sexual gratification, and it annoyed, disturbed, irritated and  
offended Plaintiff as it would have a reasonable person. Further, Plaintiff did not  
consent to the sexual abuse and harassment of FATHER MICHAEL KELLY and  
further, was incapable of consenting to such because he was a minor at the time of  
the sexual abuse.

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1 27. During the period Plaintiff was being sexually abused and harassed by FATHER  
2 MICHAEL KELLY, Defendants had the authority and ability to prevent such by removing  
3 FATHER MICHAEL KELLY from his position as priest and Pastor of MOKELUMNE HILL  
4 CHURCH. They failed to do so, allowing the abuse to occur and to continue unabated. This  
5 failure was a part of Defendants' conspiratorial plan and arrangement to conceal FATHER  
6 MICHAEL KELLY's wrongful acts, to avoid and inhibit detection, to block public disclosure, to  
7 avoid scandal, to avoid the disclosure of their tolerance of child sexual molestation and abuse, to  
8 preserve a false appearance of propriety, and to avoid investigation and action by public authority  
9 including law enforcement. Such actions were motivated by a desire to protect the reputation of  
10 Defendants and protect the monetary support of Defendants, while fostering an environment  
11 where such abuse could continue to occur.

12 28. As a direct result of the sexual harassment and abuse of Plaintiff by FATHER  
13 MICHAEL KELLY, Plaintiff has had difficulty in meaningfully interacting with others, including  
14 those in positions of authority over Plaintiff including teachers, and supervisors. Plaintiff has been  
15 limited in his ability to meaningfully interact with others due to the trauma of childhood sexual  
16 abuse. This inability to interact creates conflict with Plaintiff's values of trust and confidence in  
17 others, and has caused Plaintiff substantial emotional distress, anxiety, nervousness, depression  
18 and fear. As a direct result of the sexual abuse and molestation by FATHER MICHAEL KELLY,  
19 Plaintiff has experienced difficulties in his personal and academic life. Prior to his sexual abuse at  
20 the hands of FATHER MICHAEL KELLY, Plaintiff was a normal, well-adjusted, social child.  
21 Almost immediately following the abuse, however, Plaintiff began to withdraw from his family  
22 and friends—his grades dropped dramatically, and Plaintiff's motivation diminished drastically,  
23 leading to Plaintiff's ongoing introversion. Further, Plaintiff has not only suffered suicidal  
24 ideation, but attempted suicide in 2011. The sexual harassment and abuse of Plaintiff caused him  
25 substantial emotional distress, anxiety, nervousness, depression and fear.

26 29. As a direct and proximate result of Defendants' tortuous acts, omissions, wrongful  
27 conduct and breaches of their duties, Plaintiff's employment and professional development has  
28 been adversely affected. Plaintiff has lost wages and will continue to lose wages in an amount to

1 be determined at trial. Plaintiff has suffered substantial economic injury, all to Plaintiff's general,  
2 special and consequential damage in an amount to be proven at trial, but in no event less than the  
3 minimum jurisdictional amount of this Court.

4 30. As a further direct and proximate result of Defendants' wrongful actions, as herein  
5 alleged, Plaintiff has been hurt in his health, strength and activity. Plaintiff has sustained  
6 permanent and continuing injury to his nervous system and person, which has caused and  
7 continues to cause great mental, physical and nervous pain, suffering, fright, upset, grief, worry  
8 and shock in an amount according to proof at trial but in no event less than the jurisdictional  
9 minimum requirements of this Court.

10 31. As is set forth herein, Defendants and each of them have failed to uphold  
11 numerous mandatory duties required of them by state and federal law, as well as their own  
12 internal written policies and procedures, including:

- 13 • Duty to use reasonable care to protect students from known or foreseeable dangers  
14 (Government Code sections 820 and 815.2);
- 15 • Duty to refrain from taking official action that contradicts the provisions of Article 1,  
16 section 28(c) of the California Constitution;
- 17 • Duty to enact policies and procedures that are not in contravention of the Federal Civil  
18 Rights Act, section 1983 and the 14th amendment of the United States Constitution;
- 19 • Duty to protect students and staff, and provide adequate campus supervision;
- 20 • Duty to ensure that any direction given to students is lawful, and that adults act fairly,  
21 responsible and respectfully towards students;
- 22 • Duty to properly train staff so that they are aware of their individual responsibility for  
23 creating and maintaining a safe environment;
- 24 • Duty to review the criminal history of applicants and current employees;
- 25 • Duty to supervise students and enforce rules and regulations prescribed for schools,  
26 exercise reasonable control over students as is reasonably necessary to maintain order,  
27 protect property, or protect the health and safety of pupils or to maintain proper and  
28 appropriate conditions conducive to learning;
- Duty to exercise careful supervision of the moral conditions in the school;
- Duty to provide diligent supervision over minors;
- Duty to act promptly and diligently and not ignore or minimize problems.

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- Duty to report suspected incidents of child abuse and more specifically childhood sexual abuse (Penal Code sections 11166, 11167).

32. Defendants and each of them had and have a duty to protect students and parishioners, including Plaintiff. Defendants were required to, and failed, to provide adequate supervision, and failed to be properly vigilant in seeing that supervision was sufficient at MOKELUMNE HILL CHURCH and other off-site locations where FATHER MICHAEL KELLY carried out tasks on behalf of Defendants, such as ministering to the parishioners of MOKELUMNE HILL CHURCH, to ensure the safety of Plaintiff and others.

33. Despite having a duty to do so, Defendants failed to adequately train and supervise all staff to create a positive and safe environment, specifically including training to perceive, report and stop inappropriate sexual conduct by other members of the staff, specifically including FATHER MICHAEL KELLY, with children.

34. Defendants failed to enforce their own rules and regulations designed to protect the health and safety of the students and parishioners. Further, they failed to adopt and implement safety measures, policies and procedures designed to protect minor children such as Plaintiff from the sexually exploitive and abusive acts of their agents and employees such as FATHER MICHAEL KELLY.

35. In subjecting Plaintiff to the wrongful treatment herein described, Defendants BISHOP STEPHEN BLAIR, MONSIGNOR RICHARD RYAN and FATHER MICHAEL KELLY acted willfully and maliciously with the intent to harm Plaintiff, and in conscious disregard of Plaintiff's rights, so as to constitute malice and oppression under California Civil Code section 3294. These willful, malicious, and oppressive acts were ratified by the officers, directors, and managing agents of Defendants, including BISHOP STEPHEN BLAIRE and MONSIGNOR RICHARD RYAN by allowing him to remain in ministry with children despite knowledge of his prior sexual misconduct with minors. Plaintiff is therefore entitled to the recovery of punitive damages, in an amount to be determined by the court, against FATHER MICHAEL KELLY, BISHOP STEPHEN BLAIRE and MONSIGNOR RICHARD RYAN. Plaintiff further reserves his right, pursuant to California Code of Civil Procedure section 425.14,

1 to seek leave of court to pursue an award of punitive damages against Defendants DIOCESE OF  
2 STOCKTON, MOKELUMNE HILL CHURCH, and ST. ANDREW PARISH in a sum to be  
3 shown according to proof.

4 **FIRST CAUSE OF ACTION**  
5 **NEGLIGENCE**  
6 **(Against all Defendants)**

7 36. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
8 contained herein above as though fully set forth and brought in this cause of action.

9 37. Prior to and after the first incident of FATHER MICHAEL KELLY's sexual  
10 harassment, molestation and abuse of Plaintiff, through the present, Defendants, knew and had  
11 reason to know that FATHER MICHAEL KELLY had and was capable of sexually, physically,  
12 and mentally abusing and harassing Plaintiff or other victims.

13 38. Defendants and each of them had special duties to protect the minor Plaintiff and  
14 the other parishioners, when such minors were entrusted to Defendants' care by their parents.  
15 Plaintiff's care, welfare and physical custody was entrusted to Defendants. Defendants  
16 voluntarily accepted the entrusted care of Plaintiff. As such, Defendants owed Plaintiff, a minor  
17 child, a special duty of care that adults dealing with children owe to protect them from harm.  
18 The duty to protect and warn arose from the special, trusting, confidential, and fiduciary  
19 relationship between Defendants and Plaintiff.

20 39. Defendants breached their duties of care to the minor Plaintiff by allowing  
21 FATHER MICHAEL KELLY to come into contact with the minor Plaintiff and other  
22 parishioners, without supervision; by failing to adequately hire, supervise and retain FATHER  
23 MICHAEL KELLY who they permitted and enabled to have access to Plaintiff; by concealing  
24 from Plaintiff, his family and law enforcement that FATHER MICHAEL KELLY was sexually  
25 harassing, molesting and abusing minors; and by holding FATHER MICHAEL KELLY out to  
26 Plaintiff and his family as being of high moral and ethical repute, in good standing and  
27 trustworthy.

28 40. Defendants breached their duties to Plaintiff by failing to investigate or otherwise  
confirm or deny such facts of sexual abuse by FATHER MICHAEL KELLY, failing to reveal

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1. such facts to Plaintiff, his parents, the community and law enforcement agencies, and by placing  
2 FATHER MICHAEL KELLY into a position of trust and authority, holding him out to Plaintiff,  
3 his parents and the public as being in good standing and trustworthy.

4 41. Defendants breached their duty to Plaintiff by failing to adequately monitor and  
5 supervise FATHER MICHAEL KELLY and failing to prevent FATHER MICHAEL KELLY  
6 from committing wrongful sexual acts with minors including Plaintiff. Defendants' voluminous  
7 past records of sexual misconduct by FATHER MICHAEL KELLY caused Defendants to know,  
8 or gave them reason to know of FATHER MICHAEL KELLY's incapacity to serve as a priest  
9 ministering to children.

10 42. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through  
11 their employees and agents, were child care custodians and were under a statutory duty to report  
12 known or suspected incidents of sexual harassment, molestation or abuse of minors to a child  
13 protective agency, pursuant to California Penal Code § 11166, and not to impede the filing of any  
14 such report.

15 43. Defendants knew or had reason to know FATHER MICHAEL KELLY, their  
16 priest, agent, spiritual advisor, counselor and mentor, had sexually molested, abused, or caused  
17 touching, battery, harm, and other injuries to minors, including Plaintiff, giving rise to a duty to  
18 report such conduct under California Penal Code § 11166. Defendants also knew, or had reason to  
19 know, in the exercise of reasonable diligence, that an undue risk to minors, including Plaintiff,  
20 existed because Defendants did not comply with California's mandatory reporting requirements.

21 44. By failing to report the continuing molestations and abuse, and by ignoring the  
22 fulfillment of the mandated compliance with the reporting requirements provided under  
23 California Penal Code § 11166, Defendants created the risk and danger contemplated by the Child  
24 Abuse and Neglect Reporting Act, and as a result, unreasonably and wrongfully exposed Plaintiff  
25 and other minors to sexual molestation and abuse.

26 45. Plaintiff was a member of the class of persons for whose protection California  
27 Penal Code § 11166 was specifically adopted to protect.  
28

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1 46. Had Defendants adequately reported the molestation of Plaintiff and other minors  
2 as required by California Penal Code § 11166, further harm to Plaintiff and other minors would  
3 have been avoided.

4 47. As a proximate result of Defendants' failure to follow the mandatory reporting  
5 requirements of California Penal Code § 11166, Defendants wrongfully denied Plaintiff and other  
6 minors, the intervention of child protection services. Such public agencies would have changed  
7 the then-existing arrangements and conditions that provided the access and opportunities for the  
8 molestation of Plaintiff by FATHER MICHAEL KELLY.

9 48. The physical, mental, and emotional damages and injuries resulting from the  
10 sexual molestation of Plaintiff by FATHER MICHAEL KELLY, were the type of occurrence and  
11 injuries that the Child Abuse and Neglect Reporting Act was designed to prevent.

12 49. As a result, Defendants' failure to comply with the mandatory reporting  
13 requirements of California Penal Code section 11166 also constituted a *per se* breach of  
14 Defendants' duties to Plaintiff.

15 50. As a result of the above-described conduct, Plaintiff has suffered and continues to  
16 suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
17 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of  
18 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be  
19 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain  
20 loss of earnings and earning capacity, and has incurred and will continue to incur expenses for  
21 medical and psychological treatment, therapy, and counseling.

22 **SECOND CAUSE OF ACTION**  
23 **NEGLIGENT SUPERVISION**  
**(Against All Defendants Except Father MICHAEL KELLY)**

24 51. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
25 contained herein above as though fully set forth and brought in this cause of action.

26 52. By virtue of Plaintiff's special relationship with Defendants, and Defendants'  
27 relation to FATHER MICHAEL KELLY, Defendants owed Plaintiff a duty to provide reasonable  
28 supervision of FATHER MICHAEL KELLY, to use reasonable care in investigating FATHER



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1 MICHAEL KELLY's background, and to provide adequate warning to Plaintiff, Plaintiff's family,  
2 and minor parishioners of FATHER MICHAEL KELLY's dangerous propensities and unfitness.

3 53. As representatives of the Roman Catholic Church, where many of the parishioners  
4 thereof are vulnerable minors entrusted to the church, Defendants' priests and agents expressly  
5 and implicitly represented that their priests, directors, spiritual advisors, counselors and ministers,  
6 including FATHER MICHAEL KELLY, were not a sexual threat to children and others who  
7 would fall under FATHER MICHAEL KELLY's influence, control, direction, and guidance.

8 54. Defendants, by and through their respective agents, servants and employees, knew  
9 or had reason to know of FATHER MICHAEL KELLY's dangerous and exploitive propensities  
10 and that FATHER MICHAEL KELLY was an unfit agent. Despite such knowledge, Defendants  
11 negligently failed to supervise FATHER MICHAEL KELLY in his position of trust and authority  
12 as a priest, director, spiritual advisor, counselor and mentor and authority figure over children,  
13 where he was able to commit wrongful acts of sexual misconduct against the Plaintiff. Defendants  
14 failed to provide reasonable supervision of FATHER MICHAEL KELLY, failed to use  
15 reasonable care in investigating FATHER MICHAEL KELLY, and failed to provide adequate  
16 warning to Plaintiff and Plaintiff's family of FATHER MICHAEL KELLY's dangerous  
17 propensities and unfitness. Defendants further failed to take reasonable steps to ensure the safety  
18 of minors, including Plaintiff, from sexual harassment, molestation and abuse.

19 55. At no time during the periods of time alleged did Defendants have in place a  
20 reasonable system or procedure to investigate, supervise and monitor priests, counselors and  
21 mentors, including FATHER MICHAEL KELLY, to prevent pre-sexual grooming and sexual  
22 harassment, molestation and abuse of children, nor did they implement a system or procedure to  
23 oversee or monitor conduct toward minors and others in Defendants' care.

24 56. Defendants were aware or had reason to be aware of how vulnerable children were  
25 to sexual harassment, molestation and abuse by priests and other persons of authority within  
26 Defendants' entities.

27 57. Defendants were put on notice, knew and had reason to know that FATHER  
28 MICHAEL KELLY had previously engaged and was continuing to engage in unlawful sexual

1 conduct with minors, and had committed other felonies, for his own personal sexual gratification,  
2 and that it was foreseeable that he was engaging, or would engage in illicit sexual activities with  
3 Plaintiff, and others, under the cloak of the authority, confidence, and trust, bestowed upon him  
4 through Defendants.

5 58. Defendants were placed on actual or constructive notice that FATHER MICHAEL  
6 KELLY had molested other minors and parishioners during his employment with Defendants.  
7 Defendants were informed of molestations of minors committed by FATHER MICHAEL  
8 KELLY prior to Plaintiff's sexual abuse, and of conduct by FATHER MICHAEL KELLY that  
9 would put a reasonable person on notice of such propensity to molest and abuse children.

10 59. Even though Defendants knew or had reason to know of these illicit sexual  
11 activities by FATHER MICHAEL KELLY, Defendants did not reasonably investigate, supervise  
12 or monitor FATHER MICHAEL KELLY to ensure the safety of the minor parishioners and altar  
13 servers.

14 60. Defendants' conduct was a breach of their duties to Plaintiff.

15 61. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through  
16 their employees and agents, were child care custodians and were under a statutory duty to report  
17 known or suspected incidents of sexual molestation or abuse of minors to a child protective  
18 agency, pursuant to California Penal Code section 11166, and not to impede the filing of any such  
19 report.

20 62. Defendants knew or had reason to know that their agent, priest, director, spiritual  
21 advisor, counselor and mentor, FATHER MICHAEL KELLY, and other priests and staff of  
22 Defendants, had sexually molested, abused or caused touching, battery, harm, and other injuries  
23 to minors, including Plaintiff, giving rise to a duty to report such conduct under California Penal  
24 Code section 11166.

25 63. Defendants knew, or had reason to know, in the exercise of reasonable diligence,  
26 that an undue risk to minors, including Plaintiff, existed because Defendants did not comply with  
27 California's mandatory reporting requirements.

28

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1           64.     By failing to report the continuing molestations and abuse of FATHER MICHAEL  
2 KELLY, which Defendants knew or had reason to know about, and by ignoring the fulfillment of  
3 the mandated compliance with the reporting requirements provided under California Penal Code  
4 section 11166, Defendants created the risk and danger contemplated by the Child Abuse and  
5 Neglect Reporting Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other  
6 minors to sexual molestation and abuse.

7           65.     Plaintiff was a member of the class of persons for whose protection California  
8 Penal Code section 11166 was specifically adopted to protect.

9           66.     Had Defendants adequately reported the molestation of Plaintiff and other minors  
10 as required by California Penal Code section 11166, further harm to Plaintiff and other minors  
11 would have been avoided.

12           67.     As a proximate result of Defendants' failure to follow the mandatory reporting  
13 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and  
14 other minors the intervention of child protection services. Such public agencies would have  
15 changed the then-existing arrangements and conditions that provided the access and opportunities  
16 for the molestation of Plaintiff by FATHER MICHAEL KELLY.

17           68.     The physical, mental, and emotional damages and injuries resulting from the  
18 sexual molestation of Plaintiff by Father MICHAEL KELLY, were the type of occurrence and  
19 injuries that the Child Abuse and Neglect Reporting Act was designed to prevent.

20           69.     As a result, Defendants' failure to comply with the mandatory reporting  
21 requirements of California Penal Code section 11166 also constituted a *per se* breach of  
22 Defendants' duties to Plaintiff.

23           70.     Defendants, and each of them, breached their duty to Plaintiff by, inter alia, by  
24 failing to adequately monitor and supervise FATHER MICHAEL KELLY and stop FATHER  
25 MICHAEL KELLY from committing wrongful sexual acts with minors including Plaintiff.

26           71.     As a result of the above-described conduct, Plaintiff has suffered and continues to  
27 suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
28 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of

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1 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be  
2 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain  
3 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for  
4 medical and psychological treatment, therapy, and counseling.

5 **THIRD CAUSE OF ACTION**  
6 **NEGLIGENT HIRING/RETENTION**  
7 **(Against All Defendants Except Father MICHAEL KELLY)**

8 72. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
9 contained herein above as though fully set forth and brought in this cause of action.

10 73. By virtue of Plaintiff's special relationship with Defendants, and Defendants'  
11 relation to FATHER MICHAEL KELLY, Defendants owed Plaintiff a duty to not hire or retain  
12 FATHER MICHAEL KELLY, given his dangerous and exploitive propensities, which  
13 Defendants knew or had reason to know about had they engaged in a reasonable, meaningful and  
14 adequate investigation of his background prior to his hiring or retaining him in subsequent  
15 positions of employment.

16 74. As a Diocese and representative of the Roman Catholic Church, and operator of a  
17 school, where all of the parishioners are minors entrusted to the church, the schools, their priests  
18 and Defendants, expressly and implicitly represented that the priests, including FATHER  
19 MICHAEL KELLY, were not a sexual threat to children and others who would fall under  
20 FATHER MICHAEL KELLY's influence, control, direction, and guidance.

21 75. At no time during the periods of time alleged did Defendants have in place a  
22 reasonable system or procedure to investigate, supervise and monitor priests, including FATHER  
23 MICHAEL KELLY, to prevent pre-sexual grooming or sexual harassment, molestation and abuse  
24 of children, nor did they implement a system or procedure to oversee or monitor conduct toward  
25 minors, parishioners and others in Defendants' care.

26 76. Defendants were aware or had reason to be aware and understand how vulnerable  
27 children were to sexual harassment, molestation and abuse by priests and other persons of  
28 authority within the control of Defendants prior to Plaintiff's sexual abuse by FATHER  
MICHAEL KELLY.

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1 77. Defendants were put on notice, and had reason to know that FATHER MICHAEL  
2 KELLY had previously engaged and continued to engage in unlawful sexual conduct with minors  
3 and was committing other felonies, for his own personal gratification, and that it was, or should  
4 have been foreseeable that he was engaging, or would engage in illicit sexual activities with  
5 Plaintiff, and others, under the cloak of his authority, confidence, and trust, bestowed upon him  
6 through Defendants.

7 78. Defendants were placed on actual or constructive notice that FATHER MICHAEL  
8 KELLY had molested or was molesting minors and parishioners, both before his employment  
9 within Defendants, and during that employment. Defendants had knowledge of inappropriate  
10 conduct and molestations committed by FATHER MICHAEL KELLY before and during his  
11 employment, yet chose to allow him to remain in unrestricted ministry where he sexually abused  
12 Plaintiff.

13 79. Even though Defendants knew or had reason to know of these sexually illicit  
14 activities by FATHER MICHAEL KELLY, Defendants failed to use reasonable care in  
15 investigating FATHER MICHAEL KELLY and did nothing to reasonably investigate, supervise  
16 or monitor FATHER MICHAEL KELLY to ensure the safety of the minor parishioners.

17 80. Defendants' conduct was a breach of their duties to Plaintiff.

18 81. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through  
19 their employees and agents, were child care custodians and were under a statutory duty to report  
20 known or suspected incidents of sexual molestation or abuse of minors to a child protective  
21 agency, pursuant to California Penal Code section 11166, and not to impede the filing of any such  
22 report.

23 82. Defendants knew or had reason to know that their priest, agent, director, spiritual  
24 advisor, counselor and mentor, FATHER MICHAEL KELLY, and other priests and staff within  
25 Defendants, had sexually molested, abused or caused touching, battery, harm, and other injuries  
26 to minors, including Plaintiff, giving rise to a duty to report such conduct under California Penal  
27 Code section 11166.

1 83. Defendants knew, or had reason to know in the exercise of reasonable diligence,  
2 that an undue risk to minors, including Plaintiff, existed because Defendants did not comply with  
3 California's mandatory reporting requirements.

4 84. By failing to report the continuing molestations and abuse, which Defendants and  
5 each of them knew or had reason to know about, and by ignoring the fulfillment of the mandated  
6 compliance with the reporting requirements provided under California Penal Code section 11166,  
7 Defendants created the risk and danger contemplated by the Child Abuse and Neglect Reporting  
8 Act, and as a result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual  
9 molestation and abuse.

10 85. Plaintiff was a member of the class of persons for whose protection California  
11 Penal Code section 11166 was specifically adopted to protect.

12 86. Had Defendants adequately reported the molestation of Plaintiff and other minors  
13 as required by California Penal Code section 11166, further harm to Plaintiff and other minors  
14 would have been avoided.

15 87. As a proximate result of Defendants' failure to follow the mandatory reporting  
16 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and  
17 other minors the intervention of child protection services. Such public agencies would have  
18 changed the then-existing arrangements and conditions that provided the access and opportunities  
19 for the molestation of Plaintiff by FATHER MICHAEL KELLY.

20 88. The physical, mental, and emotional damages and injuries resulting from the  
21 sexual molestation of Plaintiff by FATHER MICHAEL KELLY, were the type of occurrence and  
22 injuries that the Child Abuse and Neglect Reporting Act was designed to prevent.

23 89. As a result, Defendants' failure to comply with the mandatory reporting  
24 requirements of California Penal Code section 11166 also constituted a *per se* breach of  
25 Defendants' duties to Plaintiff.

26 90. As a result of the above-described conduct, Plaintiff has suffered and continues to  
27 suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
28 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of

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1. enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be  
2 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain  
3 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for  
4 medical and psychological treatment, therapy, and counseling.

5 **FOURTH CAUSE OF ACTION**  
6 **NEGLIGENT FAILURE TO WARN, TRAIN, or EDUCATE**  
7 **(Against All Defendants)**

8 91. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
9 contained herein above as though fully set forth and brought in this cause of action.

10 92. Defendants owed Plaintiff a duty to take reasonable protective measures to protect  
11 Plaintiff and other minor parishioners from the risk of childhood sexual harassment, molestation  
12 and abuse by FATHER MICHAEL KELLY by properly warning, training or educating Plaintiff  
13 and other parishioners about how to avoid such a risk.

14 93. Defendants breached their duty to take reasonable protective measures to protect  
15 Plaintiff and other minor parishioners from the risk of childhood sexual harassment, molestation  
16 and abuse by FATHER MICHAEL KELLY, such as the failure to properly warn, train or educate  
17 Plaintiff and other parishioners about how to avoid such a particular risk that FATHER  
18 MICHAEL KELLY posed—of sexual misconduct.

19 94. Defendants breached their duty to take reasonable protective measures to protect  
20 Plaintiff and other minor parishioners from the risk of childhood sexual harassment, molestation  
21 and abuse by FATHER MICHAEL KELLY, by failing to supervise and stop employees of  
22 Defendants, including FATHER MICHAEL KELLY, from committing wrongful sexual acts with  
23 minors, including Plaintiff.

24 95. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through  
25 their employees and agents, were child care custodians and were under a statutory duty to report  
26 known or suspected incidents of sexual molestation or abuse of minors to a child protective  
27 agency, pursuant to California Penal Code section 11166, and not to impede the filing of any such  
28 report.

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1            96. Defendants knew or had reason to know that their agent, priest, spiritual advisor,  
2 youth counselor and mentor, FATHER MICHAEL KELLY, and other priests and staff of  
3 Defendants, had sexually molested, abused or caused touching, battery, harm, and other injuries  
4 to minors, including Plaintiff, giving rise to a duty to report such conduct under California Penal  
5 Code section 11166.

6            97. Defendants knew, or had reason to know in the exercise of reasonable diligence,  
7 that an undue risk to minors, including Plaintiff, existed because Defendants did not comply with  
8 California's mandatory reporting requirements.

9            98. By failing to report the continuing molestations and abuse, which Defendants  
10 knew or had reason to know about, and by ignoring the fulfillment of the mandated compliance  
11 with the reporting requirements provided under California Penal Code section 11166, Defendants  
12 created the risk and danger contemplated by the Child Abuse and Neglect Reporting Act, and as a  
13 result, unreasonably and wrongfully exposed Plaintiff and other minors to sexual molestation and  
14 abuse.

15            99. Plaintiff was a member of the class of persons for whose protection California  
16 Penal Code section 11166 was specifically adopted to protect.

17            100. Had Defendants adequately reported the molestation of Plaintiff and other minors  
18 as required by California Penal Code section 11166, further harm to Plaintiff and other minors  
19 would have been avoided.

20            101. As a proximate result of Defendants' failure to follow the mandatory reporting  
21 requirements of California Penal Code section 11166, Defendants wrongfully denied Plaintiff and  
22 other minors the intervention of child protection services. Such public agencies would have  
23 changed the then-existing arrangements and conditions that provided the access and opportunities  
24 for the molestation of Plaintiff by FATHER MICHAEL KELLY.

25            102. The physical, mental, and emotional damages and injuries resulting from the  
26 sexual molestation of Plaintiff by FATHER MICHAEL KELLY, were the type of occurrence and  
27 injuries that the Child Abuse and Neglect Reporting Act was designed to prevent.  
28



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1 103. As a result, Defendants' failure to comply with the mandatory reporting  
2 requirements of California Penal Code section 11166 also constituted a *per se* breach of  
3 Defendants' duties to Plaintiff.

4 104. 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, humiliations, and loss of  
7 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be  
8 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain  
9 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for  
10 medical and psychological treatment, therapy, and counseling.

11 **FIFTH CAUSE OF ACTION**  
**CONSTRUCTIVE FRAUD: Civil Code § 1573**  
12 **(Against all Defendants)**

13 105. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
14 contained herein above as though fully set forth and brought in this cause of action.

15 106. By holding FATHER MICHAEL KELLY out as an agent of Defendants, and by  
16 allowing him to undertake the spiritual and emotional instruction of minor children such as  
17 Plaintiff, Defendants entered into a confidential, fiduciary and special relationship with Plaintiff.

18 107. By holding themselves out as qualified institutions of learning for children, and by  
19 undertaking to provide the spiritual and emotional instruction and counseling of Plaintiff and  
20 other minor parishioners, Defendants entered into a confidential, fiduciary and special  
21 relationship with Plaintiff.

22 108. Defendants breached their confidential, fiduciary duty and special duties to  
23 Plaintiff by the wrongful and negligent conduct described above and incorporated into this cause  
24 of action, and in so doing, gained an advantage over Plaintiff in matters relating to Plaintiff's  
25 safety, security and health. In particular, in breaching such duties as alleged, Defendants were  
26 able to sustain their status as institutions of high moral repute, and preserve their reputation, all at  
27 the expense of Plaintiff's further injury and in violation of Defendants' mandatory duties.  
28

- 1           109. By virtue of their confidential, fiduciary and special relationship with Plaintiff,  
2 Defendants owed Plaintiff a duty to:
- 3           a. Investigate or otherwise confirm or deny such claims of sexual abuse;  
4           b. Reveal such facts to Plaintiff, Plaintiff's family and caretakers, the church  
5 community, parish community, and law enforcement agencies;  
6           c. Refuse to place FATHER MICHAEL KELLY and other molesters in positions of  
7 trust and authority within Defendants' institutions;  
8           d. Refuse to hold out FATHER MICHAEL KELLY and other molesters to the  
9 public, the parish community, minors, parents and law enforcement agencies as  
10 being in good standing and, trustworthy in keeping with his and their position as a  
11 priest, mentor, counselor, director and authority figure;  
12           e. Refuse to assign FATHER MICHAEL KELLY and other molesters to positions of  
13 power within the school and parish and over minors; and  
14           f. Disclose to Plaintiff, his family, the public, the church community, the school  
15 community, minors, and law enforcement agencies the wrongful, tortious, and  
16 sexually exploitive acts that FATHER MICHAEL KELLY had engaged in with  
17 children, as well as his evaluation, treatment and diagnosis by psychotherapists  
18 therefor.
- 19           110. Defendants' breach of their respective duties included:
- 20           a. Not making reasonable investigations of FATHER MICHAEL KELLY;  
21           b. Issuing no warnings about FATHER MICHAEL KELLY;  
22           c. Permitting FATHER MICHAEL KELLY to routinely be alone with and in control  
23 of minors, unsupervised;  
24           d. Not adopting a policy to prevent FATHER MICHAEL KELLY from routinely  
25 having minors and parishioners in his unsupervised control;  
26           e. Making no reports of any allegations of FATHER MICHAEL KELLY's abuse of  
27 parishioners, or of minors prior to or during his employment at Defendants; and  
28           f. Assigning and continuing to assign FATHER MICHAEL KELLY to duties which  
placed him in positions of authority and trust over minors, positions in which  
FATHER MICHAEL KELLY could easily isolate and sexually abuse minors.
111. At the time that Defendants engaged in such suppression and concealment of acts,  
such acts were done for the purpose of causing Plaintiff to forbear on Plaintiff's rights.
112. Defendants' misconduct did reasonably cause Plaintiff to forbear on Plaintiff's  
rights.

1 113. The misrepresentations, suppressions and concealment of facts by Defendants  
2 were intended to and were likely to mislead Plaintiff and others to believe that Defendants had no  
3 knowledge of any charges against FATHER MICHAEL KELLY, or that there were no other  
4 charges of unlawful or sexual misconduct against FATHER MICHAEL KELLY or others and  
5 that there was no need for them to take further action or precaution.

6 114. The misrepresentations, suppressions and concealment of facts by Defendants was  
7 likely to mislead Plaintiff and others to believe that Defendants had no knowledge of the fact that  
8 FATHER MICHAEL KELLY was a molester, and was known to commit wrongful sexual acts  
9 with minors, including Plaintiff.

10 115. Defendants knew or had reason to know at the time they suppressed and concealed  
11 the true facts regarding others' sexual molestations, that the resulting impressions were  
12 misleading.

13 116. Defendants suppressed and concealed the true facts regarding FATHER  
14 MICHAEL KELLY with the purpose of: preventing Plaintiff, Plaintiff's mother & family, and  
15 others, from learning that FATHER MICHAEL KELLY and others had been and were continuing  
16 to sexually harass, molest and abuse minors and others under FATHER MICHAEL KELLY's and  
17 Defendants' control, direction, and guidance, with complete impunity; inducing people, including  
18 Plaintiff and other benefactors and donors to participate and financially support Defendants'  
19 church, school and other enterprises of Defendants; preventing further reports and outside  
20 investigations into FATHER MICHAEL KELLY's and Defendants' conduct; preventing  
21 discovery of Defendants' own conduct; avoiding damage to the reputations of Defendants;  
22 protecting Defendants' power and status in the community and the academic community;  
23 avoiding damage to the reputation of Defendants, or Defendants' institutions; and avoiding the  
24 civil and criminal liability of Defendants, of FATHER MICHAEL KELLY, and of others.

25 117. At all times mentioned herein, Defendants, and in particular the DIOCESE OF  
26 STOCKTON, BISHOP STEPHEN BLAIRE, MONSIGNOR RICHARD RYAN and FATHER  
27 MICHAEL KELLY, with knowledge of the tortious nature of their own and FATHER  
28 MICHAEL KELLY's conduct, knowingly conspired and gave each other substantial assistance to

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1 perpetrate the misrepresentations, fraud and deceit alleged herein—covering up the past  
2 allegations of sexual misconduct lodged against FATHER MICHAEL KELLY, misrepresenting  
3 to the community that he was away for health reasons when he was, in fact, away for  
4 psychological evaluation and treatment for sexual issues with children, and allowing FATHER  
5 MICHAEL KELLY to remain in ministry so they could maintain their reputations and allow  
6 donations to continue flowing into the coffers of the DIOCESE OF STOCKTON.

7 118. Plaintiff and others were misled by Defendants' suppressions and concealment of  
8 facts, and in reliance thereon, were induced to act or induced not to act, exactly as intended by  
9 Defendants. Specifically, Plaintiff and Plaintiff's family was induced to believe that there were  
10 no allegations of criminal or sexual abuse against FATHER MICHAEL KELLY and that he was  
11 safe to be around children. Had Plaintiff and his family, and others, known the true facts about  
12 FATHER MICHAEL KELLY, they would have not participated further in activities of the  
13 DIOCESE OF STOCKTON or MOKELUMNE HILL CHURCH, or continued to financially  
14 support Defendants' activities. They would have reported the matters to the proper authorities, to  
15 other minor parishioners and their parents so as to prevent future recurrences; they would not  
16 have allowed children, including Plaintiff, to be alone with, or have any relationship with  
17 FATHER MICHAEL KELLY; they would not have allowed children, including Plaintiff, to  
18 attend or be under the control of Defendants; they would have undertaken their own  
19 investigations which would have led to discovery of the true facts; and they would have sought  
20 psychological counseling for Plaintiff, and for other children molested and abused by FATHER  
21 MICHAEL KELLY.

22 119. By giving FATHER MICHAEL KELLY the position of priest, spiritual advisor,  
23 counselor and mentor, Defendants impliedly represented that FATHER MICHAEL KELLY was  
24 safe and morally fit to give children direction and guidance.

25 120. When Defendants made these affirmative or implied representations and non-  
26 disclosures of material facts, Defendants knew or had reason to know that the facts were  
27 otherwise. Defendants knowingly and intentionally suppressed the material facts that FATHER  
28 MICHAEL KELLY had on numerous, prior occasions sexually, physically, and mentally abused

1. minors and parishioners of Defendants, including Plaintiff, and knew of or learned of conduct, or  
2 had reason to know of conduct by FATHER MICHAEL KELLY which placed Defendants on  
3 notice that FATHER MICHAEL KELLY had previously been suspected of felonies, including  
4 unlawful sexual conduct with minors, and was likely abusing children.

5 121. Because of Plaintiff's young age, and because of the status of FATHER  
6 MICHAEL KELLY as an authority figure to Plaintiff, Plaintiff was vulnerable to FATHER  
7 MICHAEL KELLY. FATHER MICHAEL KELLY sought Plaintiff out, and was empowered by  
8 and accepted Plaintiff's vulnerability. Plaintiff's vulnerability also prevented Plaintiff from  
9 effectively protecting herself from the sexual advances of FATHER MICHAEL KELLY.

10 122. Defendants had the duty to obtain and disclose information relating to sexual  
11 misconduct of FATHER MICHAEL KELLY.

12 123. Defendants misrepresented, concealed or failed to disclose information relating to  
13 sexual misconduct of FATHER MICHAEL KELLY.

14 124. Defendants knew that they had misrepresented, concealed or failed to disclose  
15 information related to sexual misconduct of FATHER MICHAEL KELLY.

16 125. Plaintiff justifiably relied upon Defendants for information relating to sexual  
17 misconduct of FATHER MICHAEL KELLY.

18 126. Defendants, particularly the DIOCESE OF STOCKTON, BISHOP STEPHEN  
19 BLAIRE, FATHER MICHAEL KELLY and MONSIGNOR RICHARD RYAN, in concert with  
20 each other and with the intent to conceal and defraud, conspired and came to a meeting of the  
21 minds whereby they would misrepresent, conceal or fail to disclose information relating to the  
22 sexual misconduct of FATHER MICHAEL KELLY, the inability of Defendants to supervise or  
23 stop FATHER MICHAEL KELLY from sexually harassing, molesting and abusing Plaintiff, and  
24 their own failure to properly investigate, supervise and monitor his conduct with minor  
25 parishioners.

26 127. By so concealing, Defendants committed at least one act in furtherance of the  
27 conspiracy.

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1 128. As a result of the above-described conduct, Plaintiff has suffered and continues to  
2 suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
3 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of  
4 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be  
5 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain  
6 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for  
7 medical and psychological treatment, therapy, and counseling.

8 129. In addition, when Plaintiff finally discovered the fraud of Defendants, and  
9 continuing thereafter, Plaintiff experienced recurrences of the above-described injuries. In  
10 addition, when Plaintiff finally discovered the fraud of Defendants, and continuing thereafter,  
11 Plaintiff experienced extreme and severe mental anguish and emotional distress that Plaintiff had  
12 been the victim of Defendants' fraud; that Plaintiff had not been able to help other minors being  
13 molested because of the fraud, and that Plaintiff had not been able because of the fraud to receive  
14 timely medical treatment needed to deal with the problems Plaintiff had suffered and continues to  
15 suffer as a result of the sexual harassment, molestation and abuse.

16 130. In subjecting Plaintiff to the wrongful treatment herein described, Defendants  
17 BISHOP STEPHEN BLAIR, MONSIGNOR RICHARD RYAN and FATHER MICHAEL  
18 KELLY acted willfully and maliciously with the intent to harm Plaintiff, and in conscious  
19 disregard of Plaintiff's rights, so as to constitute malice and oppression under California Civil  
20 Code section 3294. These willful, malicious, and oppressive acts were ratified by the officers,  
21 directors, and managing agents of Defendants, including BISHOP STEPHEN BLAIRE and  
22 MONSIGNOR RICHARD RYAN by allowing him to remain in ministry with children despite  
23 knowledge of his prior sexual misconduct with minors. Plaintiff is therefore entitled to the  
24 recovery of punitive damages, in an amount to be determined by the court, against FATHER  
25 MICHAEL KELLY, BISHOP STEPHEN BLAIRE and MONSIGNOR RICHARD RYAN.  
26 Plaintiff further reserves his right, pursuant to California Code of Civil Procedure section 425.14,  
27 to seek leave of court to pursue an award of punitive damages against Defendants DIOCESE OF  
28

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1 STOCKTON, MOKELUMNE HILL CHURCH and ST. ANDREW PARISH in a sum to be  
2 shown according to proof.

3 **SIXTH CAUSE OF ACTION**  
4 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
5 **(Against All Defendants)**

6 131. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
7 contained herein above as though fully set forth and brought in this cause of action.

8 132. The DIOCESE OF STOCKTON's, BISHOP STEPHEN BLAIRE's,  
9 MONSIGNOR RICHARD RYAN's and FATHER MICHAEL KELLY's conduct toward  
10 Plaintiff, as described herein, was outrageous and extreme. It was well outside the realm of  
11 conduct that would be tolerated by those in a civilized society, and well beyond the type of  
12 conduct that one would expect a child care organization to participate in.

13 133. A reasonable person would not expect or tolerate the sexual harassment,  
14 molestation and abuse of Plaintiff by FATHER MICHAEL KELLY, or the concealment of his  
15 past transgressions by Defendants. Plaintiff had great trust, faith and confidence in FATHER  
16 MICHAEL KELLY and in Defendants, which, by virtue of FATHER MICHAEL KELLY's and  
17 Defendants' wrongful conduct, turned to fear.

18 134. Defendants' conduct toward Plaintiff, as described herein, was outrageous and  
19 extreme.

20 135. A reasonable person would not expect or tolerate Defendants putting FATHER  
21 MICHAEL KELLY, who they had reason to know was a child molester and abuser, in charge at  
22 MOKELUMNE HILL CHURCH, which enabled FATHER MICHAEL KELLY to have access to  
23 minor parishioners so that he could commit wrongful sexual acts, including the conduct described  
24 herein, with minors, including Plaintiff. Plaintiff had great trust, faith and confidence in  
25 Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

26 136. A reasonable person would not expect Defendants to be incapable of supervising  
27 or stopping employees of Defendants, including FATHER MICHAEL KELLY, from committing  
28 wrongful sexual acts with minors, including Plaintiff, or to supervise FATHER MICHAEL

1 KELLY. Plaintiff had great trust, faith and confidence in Defendants, which, by virtue of  
2 Defendants' wrongful conduct, turned to fear.

3 137. FATHER MICHAEL KELLY's and Defendants' conduct described herein was  
4 intentional and malicious and done for the purpose of causing or with the substantial certainty that  
5 Plaintiff would suffer humiliation, mental anguish, and emotional and physical distress.

6 138. 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 and was prevented and will continue to be  
10 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain  
11 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for  
12 medical and psychological treatment, therapy, and counseling.

13 139. In subjecting Plaintiff to the wrongful treatment herein described, Defendants  
14 BISHOP STEPHEN BLAIR, MONSIGNOR RICHARD RYAN and FATHER MICHAEL  
15 KELLY acted willfully and maliciously with the intent to harm Plaintiff, and in conscious  
16 disregard of Plaintiff's rights, so as to constitute malice and oppression under California Civil  
17 Code section 3294. These willful, malicious, and oppressive acts were ratified by the officers,  
18 directors, and managing agents of Defendants, including BISHOP STEPHEN BLAIRE and  
19 MONSIGNOR RICHARD RYAN by allowing him to remain in ministry with children despite  
20 knowledge of his prior sexual misconduct with minors. Plaintiff is therefore entitled to the  
21 recovery of punitive damages, in an amount to be determined by the court, against FATHER  
22 MICHAEL KELLY, BISHOP STEPHEN BLAIRE and MONSIGNOR RICHARD RYAN.  
23 Plaintiff further reserves his right, pursuant to California Code of Civil Procedure section 425.14,  
24 to seek leave of court to pursue an award of punitive damages against Defendants DIOCESE OF  
25 STOCKTON, MOKELUMNE HILL CHURCH and ST. ANDREW PARISH in a sum to be  
26 shown according to proof.

27 ///

28 ///



**SEVENTH CAUSE OF ACTION**  
**SEXUAL BATTERY: Civil Code § 1708.5**  
**(Against Defendant Father MICHAEL KELLY)**

140. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

141. During Plaintiff's time as a minor parishioner at MOKELUMNE HILL CHURCH, Defendant FATHER MICHAEL KELLY intentionally, recklessly and wantonly did acts which were intended to, and did result in harmful and offensive contact with intimate parts of Plaintiff's person, including but not limited to: wrestling with and tickling Plaintiff for his own personal sexual gratification; requiring Plaintiff to forgo wearing pants underneath his altar robes; fondling and groping Plaintiff's naked body, including his bare thighs, penis, testicles and buttocks; grabbing Plaintiff's head and pulling it toward FATHER MICHAEL KELLY's crotch; and FATHER MICHAEL KELLY forcibly sodomizing Plaintiff. FATHER MICHAEL KELLY engaged in these activities, abusing his position of authority and trust as a priest, all while FATHER MICHAEL KELLY was acting in the course and scope of his agency and employment with Defendants.

142. Defendant FATHER MICHAEL KELLY did the aforementioned acts with the intent to cause a harmful or offensive contact with an intimate part of Plaintiff's person, and would offend a reasonable sense of personal dignity. Further, said acts did cause a harmful or offensive contact with an intimate part of Plaintiff's person that would offend a reasonable sense of personal dignity.

143. Because of FATHER MICHAEL KELLY's position of authority over Plaintiff, and Plaintiff's mental and emotional state, and Plaintiff's young age under the age of consent, Plaintiff was unable to, and did not, give meaningful consent to such acts.

144. As a direct, legal and proximate result of the acts of Defendant FATHER MICHAEL KELLY, Plaintiff sustained serious and permanent injuries to his person, all to his damage in an amount to be shown according to proof and within the jurisdiction of the Court.

145. As a direct result of the sexual abuse by FATHER MICHAEL KELLY, Plaintiff has difficulty in reasonably or meaningfully interacting with others, including those in positions

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1 of authority over Plaintiff including teachers, supervisors, and in intimate, confidential and  
2 familial relationships, due to the trauma of childhood sexual abuse inflicted upon him by  
3 Defendants. This inability to interact creates conflict with Plaintiff's values of trust and  
4 confidence in others, and has caused Plaintiff substantial emotional distress, anxiety, nervousness,  
5 depression and fear. As a direct result of the molestation by FATHER MICHAEL KELLY,  
6 Plaintiff has had issues with his personal and academic life. Prior to his sexual abuse at the hands  
7 of FATHER MICHAEL KELLY, Plaintiff was a well-adjusted, social child. Almost immediately  
8 following the abuse, however, Plaintiff's grades dropped dramatically, and Plaintiff's motivation  
9 diminished drastically, leading to Plaintiff's ongoing introversion. Further, Plaintiff has realized  
10 that Defendant's conduct was, and is, responsible for his suicidal ideation and attempts. These  
11 feelings have caused Plaintiff substantial emotional distress, anxiety, nervousness, depression and  
12 fear.

13 146. The conduct of FATHER MICHAEL KELLY was intentional, oppressive,  
14 malicious and despicable, was done in conscious disregard for the rights and safety of others, and  
15 was carried out with a conscious disregard of his right to be free from such tortious behavior,  
16 such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294,  
17 entitling Plaintiff to punitive damages against FATHER MICHAEL KELLY in an amount  
18 appropriate to punish and set an example of FATHER MICHAEL KELLY.

19 **EIGHTH CAUSE OF ACTION**  
20 **ASSAULT**  
21 **(Against Defendant Father MICHAEL KELLY)**

22 147. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
23 contained herein above as though fully set forth and brought in this cause of action.

24 148. Defendant FATHER MICHAEL KELLY, in doing the things herein alleged,  
25 including but not limited to FATHER MICHAEL KELLY: intending to wrestle with and tickle  
26 Plaintiff for his own personal sexual gratification; intending to prevent Plaintiff from wearing  
27 pants; intending to fondle grope Plaintiff's naked body, including his bare thighs, penis, testicles  
28 and buttocks; and FATHER MICHAEL KELLY intending to forcibly sodomize Plaintiff, all  
while FATHER MICHAEL KELLY was in the course and scope of his agency and employment

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1 by Defendants, was intended to cause harmful or offensive contact with Plaintiff's person, or  
2 intended to put Plaintiff in imminent apprehension of such contact.

3 149. In doing the things herein alleged, Plaintiff was put in imminent apprehension of a  
4 harmful or offensive contact by FATHER MICHAEL KELLY, and actually believed FATHER  
5 MICHAEL KELLY had the ability to make harmful or offensive contact with Plaintiff's person.

6 150. Plaintiff did not consent to FATHER MICHAEL KELLY's intended harmful or  
7 offensive contact with Plaintiff's person, or intent to put Plaintiff in imminent apprehension of  
8 such contact. Additionally, because Plaintiff was a minor during the time herein alleged, he  
9 lacked the ability to consent to sexual contact with any person, especially with a priest, mentor,  
10 spiritual advisor, and counselor at the church and school he attended.

11 151. In doing the things herein alleged, FATHER MICHAEL KELLY violated  
12 Plaintiff's right, pursuant to Civil Code section 43, of protection from bodily restraint or harm,  
13 and from personal insult. In doing the things herein alleged, FATHER MICHAEL KELLY  
14 violated his duty, pursuant to Civil Code section 1708, to abstain from injuring the person of  
15 Plaintiff or infringing upon his rights.

16 152. As a result of the above-described conduct, Plaintiff has suffered and continues to  
17 suffer great pain of mind and body, shock, emotional distress, physical manifestations of  
18 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliations, and loss of  
19 enjoyment of life; has suffered and continues to suffer and was prevented and will continue to be  
20 prevented from performing daily activities and obtaining the full enjoyment of life; will sustain  
21 loss of earnings and earning capacity, and/or has incurred and will continue to incur expenses for  
22 medical and psychological treatment, therapy, and counseling.

23 153. The conduct of FATHER MICHAEL KELLY was intentional, oppressive,  
24 malicious and despicable, was done in conscious disregard for the rights and safety of others, and  
25 was carried out with a conscious disregard of his right to be free from such tortious behavior,  
26 such as to constitute oppression, fraud or malice pursuant to California Civil Code section 3294,  
27 entitling Plaintiff to punitive damages against FATHER MICHAEL KELLY in an amount  
28 appropriate to punish and set an example of FATHER MICHAEL KELLY.

**NINTH CAUSE OF ACTION**  
**SEXUAL HARASSMENT: Civil Code § 51.9**  
**(Against All Defendants)**

154. Plaintiff re-alleges and incorporates by reference herein each and every allegation contained herein above as though fully set forth and brought in this cause of action.

155. During Plaintiff's time as a student and parishioner at Defendants, Defendant FATHER MICHAEL KELLY intentionally, recklessly and wantonly made sexual advances, solicitations, requests, demands for sexual compliance of a hostile nature based on Plaintiff's gender that were unwelcome, pervasive and severe, including FATHER MICHAEL KELLY wrestling with and tickling Plaintiff for his own personal sexual gratification; requiring Plaintiff to forgo wearing pants underneath his altar robes; fondling and groping Plaintiff's naked body, including his bare thighs, penis, testicles and buttocks; grabbing Plaintiff's head and pulling it toward FATHER MICHAEL KELLY's crotch; and FATHER MICHAEL KELLY forcibly sodomizing Plaintiff.

156. The incidents of abuse outlined herein above took place while Plaintiff was under the control of FATHER MICHAEL KELLY, in his capacity and position as Plaintiff's priest, teacher, counselor and mentor at Defendants, and while acting specifically on behalf of Defendants.

157. During Plaintiff's time as a parishioner, altar server and student at Defendants, FATHER MICHAEL KELLY intentionally, recklessly and wantonly did acts which resulted in harmful and offensive contact with intimate parts of Plaintiff's person, including but not limited to, using his position as a priest, spiritual advisor, youth counselor and mentor to require Plaintiff to give into his sexual suggestions, and to use his authority and position of trust to exploit him physically and emotionally.

158. Because of Plaintiff's relationship with FATHER MICHAEL KELLY as a student, altar server and parishioner at Defendants, and Plaintiff's young age as a minor student, Plaintiff was unable to easily terminate the priest-penitent relationship he had with Defendant FATHER MICHAEL KELLY.

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1 159. Because of FATHER MICHAEL KELLY's position of authority over Plaintiff,  
2 and Plaintiff's mental and emotional state, and Plaintiff's young age under the age of consent,  
3 Plaintiff was unable to, and did not, give meaningful consent to such acts.

4 160. A corporation is a "person" within meaning of Civil Code section 51.9, which  
5 subjects persons to liability for sexual harassment within a business, service or professional  
6 relationship, and such an entity defendant may be held liable under this statute for the sexual  
7 harassment of its employee FATHER MICHAEL KELLY. C.R. v. Tenet Healthcare Corp.,  
8 (2009) 87 Cal.Rptr.3d 424. Further, principles of ratification apply when the principal ratifies the  
9 agent's originally unauthorized harassment, as is alleged to have occurred herein, by the  
10 DIOCESE OF STOCKTON, BISHOP STEPHEN BLAIRE and MONSIGNOR RICHARD  
11 RYAN choosing to assign FATHER MICHAEL KELLY to a position at MOKELUMNE HILL  
12 CHURCH despite having knowledge of his prior sexual misconduct with minors, and  
13 psychological evaluation, diagnosis and treatment therefor. C.R. v. Tenet Healthcare Corp.,  
14 (2009) 87 Cal.Rptr.3d 424. Even though Defendants knew or had reason to know of these  
15 activities by Defendant FATHER MICHAEL KELLY, Defendants did nothing reasonable to  
16 investigate, supervise or monitor Defendant FATHER MICHAEL KELLY to ensure the safety of  
17 the minor parishioners.

18 161. Defendants' conduct was a breach of their duties to Plaintiff.

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

26 163. In subjecting Plaintiff to the wrongful treatment herein described, Defendants  
27 BISHOP STEPHEN BLAIR, MONSIGNOR RICHARD RYAN and FATHER MICHAEL  
28 KELLY acted willfully and maliciously with the intent to harm Plaintiff, and in conscious

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1 disregard of Plaintiff's rights, so as to constitute malice and oppression under California Civil  
2 Code section 3294. These willful, malicious, and oppressive acts were ratified by the officers,  
3 directors, and managing agents of Defendants, including BISHOP STEPHEN BLAIRE and  
4 MONSIGNOR RICHARD RYAN by allowing him to remain in ministry with children despite  
5 knowledge of his prior sexual misconduct with minors. Plaintiff is therefore entitled to the  
6 recovery of punitive damages, in an amount to be determined by the court, against FATHER  
7 MICHAEL KELLY, BISHOP STEPHEN BLAIRE and MONSIGNOR RICHARD RYAN.  
8 Plaintiff further reserves his right, pursuant to California Code of Civil Procedure section 425.14,  
9 to seek leave of court to pursue an award of punitive damages against Defendants DIOCESE OF  
10 STOCKTON, MOKELUMNE HILL CHURCH and ST. ANDREW PARISH in a sum to be  
11 shown according to proof.

12 164. As a result of the conduct alleged herein above, constituting sexual harassment  
13 against Plaintiff, Plaintiff is entitled to an award of attorney's fees against Defendants pursuant to  
14 Civil Code section 52.

15 **TENTH CAUSE OF ACTION**  
16 **GENDER VIOLENCE: Civil Code § 52.4**  
**(Against Defendant Father MICHAEL KELLY)**

17 165. Plaintiff re-alleges and incorporates by reference herein each and every allegation  
18 contained herein above as though fully set forth and brought in this cause of action.

19 166. Defendants' acts committed against Plaintiff, as alleged herein, including the  
20 sexual harassment, molestation and abuse of the minor Plaintiff constitute gender violence and a  
21 form of sex discrimination in that one or more of Defendants' acts of would constitute a criminal  
22 offense under state law that has as an element the use, attempted use, or threatened use of  
23 physical force against the person of another, committed at least in part based on the gender of the  
24 victim, whether or not those acts have resulted in criminal complaints, charges, prosecution, or  
25 conviction.

26 167. Defendants' acts committed against Plaintiff, as alleged herein, including the  
27 sexual harassment, molestation and abuse of the minor Plaintiff constitute gender violence and a  
28 form of sex discrimination in that Defendants' conduct caused a physical intrusion or physical

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1. invasion of a sexual nature upon Plaintiff under coercive conditions, whether or not those acts  
2 have resulted in criminal complaints, charges, prosecution, or conviction.

3 168. Plaintiff is informed and based thereon alleges that the conduct of Defendants was  
4 oppressive, malicious and despicable in that it was intentional and done in conscious disregard for  
5 the rights and safety of others, and were carried out with a conscious disregard of her right to be  
6 free from such tortious behavior, such as to constitute oppression, fraud or malice pursuant to  
7 California Civil Code section 3294, entitling Plaintiff to punitive damages against FATHER  
8 MICHAEL KELLY in an amount appropriate to punish and set an example of FATHER  
9 MICHAEL KELLY, in a sum to be shown according to proof.

10 **WHEREFORE**, Plaintiff prays for a jury trial and for judgment against Defendants, and  
11 each of them, as follows:

12 **FOR ALL CAUSES OF ACTION**

- 13 1. For past, present and future general damages in an amount to be determined at trial;
- 14 2. For past, present and future special damages, including but not limited to past, present  
15 and future lost earnings, economic damages and others, in an amount to be determined at trial;
- 16 3. Any appropriate punitive or exemplary damages against Defendant FATHER  
17 MICHAEL KELLY, Defendant BISHOP STEPHEN BLAIRE and MONSIGNOR RICHARD  
18 RYAN;
- 19 4. Plaintiff reserves his right, pursuant to California Code of Civil Procedure § 425.14, to  
20 seek leave of Court via noticed motion to pursue an appropriate award of punitive damages  
21 against all religious Defendants, namely the DIOCESE OF STOCKTON, MOLKELUMNE HILL  
22 CHURCH and ST. ANDREW PARISH;.
- 23 5. Any appropriate statutory damages;
- 24 6. For costs of suit;
- 25 7. For interest as allowed by law;
- 26 8. For attorney's fees pursuant to California Code of Civil Procedure § 1021.5, Civil Code  
27 § 52, or otherwise as allowable by law; and

28 ///


1 9. For such other and further relief as the court may deem proper.

2 **Filed Pursuant to California Code of Civil Procedure section 340.1.**

3 Dated: November 7, 2012

MANLY & STEWART

4  
5 By:

  
VINCE WILLIAM FINALDI, Esq.  
Attorneys for Plaintiff,  
JOHN MT DOE.

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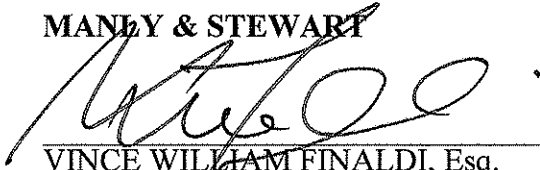
**DEMAND FOR JURY TRIAL**

Plaintiff JOHN MT DOE, an individual, HEREBY demands a trial by jury.

Dated: November 7, 2012

**MANLY & STEWART**

By:



VINCE WILLIAM FINALDI, Esq.  
Attorney for Plaintiff,  
JOHN MT DOE.

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