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ENDORSED  
FILED  
Superior Court of California  
County of San Francisco  
AUG 09 2011  
CLERK OF THE COURT  
BY BOBBY DELAVERA  
Deputy Clerk

5 Attorneys for Plaintiff

6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 For the County of San Francisco

8 Matthew Frazer, an individual,  
9 Plaintiffs,

Case No.

CGC-11-513216

10 v.

11 Roman Catholic Bishop of San Jose;  
St. Frances Cabrini Church; St.  
12 Frances Cabrini School;  
Roman Catholic Archbishop of San  
13 Francisco; Roman Catholic Bishop of  
Fresno; Diocese of Fresno Education  
14 Corporation; Father Don Flickinger,  
an individual; and Does 1 through  
15 100, Inclusive.

COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF FOR:

16 Defendants.

1. PUBLIC NUISANCE
2. NEGLIGENCE
3. NEGLIGENT SUPERVISION/  
FAILURE TO WARN;
4. NEGLIGENT  
HIRING/RETENTION
5. FRAUD;
6. FIDUCIARY/CONFIDENTIAL  
RELATIONSHIP FRAUD AND  
CONSPIRACY;
7. BREACH OF FIDUCIARY  
DUTY;
8. NEGLIGENT FAILURE TO  
WARN, TRAIN, OR EDUCATE  
PLAINTIFF;
9. INTENTIONAL INFLICTION  
OF EMOTIONAL DISTRESS;
10. NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS;
11. FRAUD AND DECEIT;
12. PREMISES LIABILITY.
13. CHILDHOOD SEXUAL  
ABUSE;
14. SEXUAL BATTERY

JURY TRIAL DEMANDED

BY FAX

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2 Based upon information and belief available at the time of the filing of this  
3 Complaint, Plaintiff Matthew Frazer makes the following allegations:

4 **PARTIES**

5 1. Plaintiff is a twenty-three-year-old adult male. Plaintiff was a minor residing in  
6 the county of Santa Clara at the time of the sexual abuse alleged herein.

7 2. Defendant Roman Catholic Bishop of San Jose ("Defendant San Jose  
8 Bishop") is a corporation sole authorized to conduct business and conducting  
9 business in the State of California, with its principal place of business in Santa Clara  
10 County during relevant dates herein. Defendant San Jose Bishop had responsibility  
11 for Roman Catholic Church operations in Santa Clara County, California during  
12 relevant dates herein. Defendant San Jose Bishop is the leader of the Roman  
13 Catholic Diocese in which the sexual abuse occurred.

14 2.1 Defendant St. Frances Cabrini Church ("Defendant Parish") is a Roman  
15 Catholic parish located in the city of San Jose, County of Santa Clara, California.  
16 Defendant Parish is the parish where Plaintiff was a parishioner during the period of  
17 wrongful conduct.

18 2.2 Defendant St. Frances Cabrini School ("Defendant School") is a Roman  
19 Catholic school located in the city of San Jose, County of Santa Clara, California.  
20 Defendant school is the school where Plaintiff was a student during the period of  
21 wrongful conduct. Defendant San Jose Bishop, Defendant School and Defendant  
22 Parish are sometimes collectively referred to as the "San Jose Defendants."

23 2.3 Defendant Roman Catholic Archbishop of San Francisco ("Defendant  
24 Archbishop") is a corporation sole authorized to conduct business and conducting  
25 business in the State of California, with its principal place of business in San  
26 Francisco County, California, and doing business in both San Francisco County and  
27 Santa Clara County during relevant dates herein. Defendant Archbishop had  
28 responsibility for Roman Catholic Church operations in San Francisco County and

1 Santa Clara County, California during relevant dates herein. Defendant Archbishop  
2 is the leader of the Roman Catholic Archdiocese in which Fr. Flickinger was  
3 assigned before he abused Plaintiff, whose agents learned of the threat posed by  
4 Fr. Flickinger before the abuse of Plaintiff, and in which Fr. Flickinger is now  
5 assigned. Defendant Archbishop thus could have prevented Plaintiff's abuse.

6 2.4 Defendant Roman Catholic Bishop of Fresno ("Defendant Fresno Bishop") is  
7 a corporation sole authorized to conduct business and conducting business in the  
8 State of California, with its principal place of business in Fresno County during  
9 relevant dates herein. While Fr. Flickinger was assigned in the Diocese of Fresno in  
10 the late 1960s, and long before Flickinger sexually assaulted Plaintiff, Defendant  
11 Fresno Bishop knew or should have known of the danger Fr. Flickinger posed to  
12 children. Defendant Fresno Bishop thus could have prevented Plaintiff's abuse.  
13 Defendant Fresno Bishop is the leader of the Roman Catholic Diocese in which Fr.  
14 Flickinger was assigned and whose agents learned of the threat posed by Flickinger  
15 long before the abuse of Plaintiff. Defendant Fresno Bishop thus could have  
16 prevented Plaintiff's abuse.

17 2.5 Defendant Roman Catholic Education Corporation of Fresno ("Education  
18 Corporation") is a California corporation authorized to conduct business and  
19 conducting business in the State of California, with its principal place of business in  
20 Fresno County, California, and doing business in Fresno County during relevant  
21 dates herein. Education Corporation had responsibility for Roman Catholic school  
22 operations in Fresno County, California during relevant dates herein, including the  
23 school where Flickinger was assigned in the late 1960s, San Joaquin Memorial High  
24 School ("SJMHS"). While Flickinger was assigned to SJMHS, he repeatedly  
25 engaged in conduct with students which Education Corporation knew or should have  
26 known evidenced the danger Fr. Flickinger posed to children. Defendant Education  
27 Corporation thus could have prevented Plaintiff's abuse. Defendant Fresno Bishop  
28 and Defendant Education Corporation are sometimes collectively referred to as the

1 "Fresno Defendants."

2 2.6 Defendant Fr. Don Flickinger, the Perpetrator, was an individual residing and/or  
3 doing business in the City and County of Santa Clara, California, during the period of  
4 abuse of Plaintiff, and was and/or is a Roman Catholic priest, member, employee,  
5 agent and/or servant of Defendant San Jose Bishop and/or Defendant Parish and/or  
6 Defendant School and/or Defendant Archbishop and/or Defendant Fresno Bishop  
7 and/or Defendant Education Corporation and/or Does 1-100. During the abuse, Fr.  
8 Flickinger was assigned, or in residence, or doing supply work, or volunteering, or  
9 visiting at Defendant Parish and/or Defendant School, and was under the direct  
10 supervision, employ and control of the Defendant San Jose Bishop and/or Defendant  
11 Parish and/or Defendant School and/or Defendant Archbishop and/or Defendant  
12 Fresno Bishop and/or Defendant Education Corporation and/or Does 1-100. Fr.  
13 Flickinger is currently assigned and/or in residence at St. Paul's Catholic Church and  
14 Elementary School in the Archdiocese of San Francisco.

15 3. Defendant Does 1 through 100, inclusive, are individuals and/or business or  
16 corporate entities incorporated in and/or doing business in California whose true names  
17 and capacities are unknown to Plaintiff who therefore sues such defendants by such  
18 fictitious names, and who will amend the Complaint to show the true names and  
19 capacities of each such Doe defendant when ascertained. Each such Defendant Doe  
20 is legally responsible in some manner for the events, happenings and/or tortious and  
21 unlawful conduct that caused the injuries and damages alleged in this Complaint.

22 4. Fr. Flickinger and/or each Defendant were and/or are the agent, servant and/or  
23 employee of Defendant San Jose Bishop and/or Defendant Parish and/or Defendant  
24 School and/or Defendant Archbishop and/or Defendant Fresno Bishop and/or  
25 Defendant Education Corporation and/or Does 1-100. Fr. Flickinger and/or each  
26 Defendant was acting within the course and scope of his, her or its authority as an  
27 agent, servant and/or employee of Fr. Flickinger and/or other Defendants. Fr.  
28 Flickinger and/or Defendant San Jose Bishop and/or Defendant Parish and/or

1 Defendant School and/or Defendant Archbishop and/or Defendant Fresno Bishop  
2 and/or Defendant Education Corporation and/or Does 1-100, and each of them, are  
3 individuals, corporations, partnerships and other entities which engaged in, joined in  
4 and conspired with the other wrongdoers in carrying out the tortious and unlawful  
5 activities described in this Complaint, and Fr. Flickinger and/or each Defendant ratified  
6 the acts of Fr. Flickinger and/or Defendant San Jose Bishop and/or Defendant Parish  
7 and/or Defendant School and/or Defendant Archbishop and/or Defendant Fresno  
8 Bishop and/or Defendant Education Corporation and/or Does 1-100.

9  
10 **BACKGROUND FACTS APPLICABLE TO ALL COUNTS**

11 5. Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents  
12 committed acts of childhood sexual abuse at St. Frances Cabrini and at various  
13 locations around California and elsewhere before, during, and after the time Plaintiff  
14 attended St. Frances Cabrini. Defendants' practice of concealing the identities,  
15 propensities, and current assignments and/or residences of these perpetrators has  
16 enabled and empowered such men to sexually assault and/or continue to place at risk  
17 countless children around the various locations in California where Defendants conduct  
18 their business. Defendants have greatly increased the danger to children by continuing  
19 to transfer perpetrators such as Fr. Flickinger, after allegations of abuse arise, from one  
20 diocese to another into unsuspecting parishes and communities. Additionally, an  
21 unknown number of Defendants' former pedophilic and/or ephebophilic agents, whose  
22 propensities Defendants have been aware of for years but have disclosed to no one,  
23 continue to sexually assault and/or place at risk countless children at locations where  
24 Defendants' former agents now reside. Fr. Flickinger's history, as set forth below, is  
25 but one example of the threat to today's children posed both by such men, and by  
26 Defendants' continuing practices in managing them.

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1 **Fr. Flickinger is Ordained in the Diocese of Monterey-Fresno in 1964**

2 6. Fr. Flickinger was ordained in 1964. One of his first assignments was as  
3 chaplain at San Joaquin Memorial High School ("SJMHS") in Fresno. Soon thereafter  
4 Flickinger began openly engaging in sexually motivated misconduct that was  
5 recognized by numerous boys at SJMHS as inappropriate, but was ignored by agents  
6 of the Fresno Defendants. Those agents not only observed Fr. Flickinger's conduct but  
7 allowed it to continue. Among other things, Flickinger regularly and openly  
8 inappropriately touched boys, removed select boys from classes for private meetings  
9 in his office, asked them sexual questions, and often attempted to give his misconduct  
10 the false appearance of appropriateness. For instance, one of his ploys was to attempt  
11 to cloak his sexual questions in purported penitential communications by inducing boys  
12 to agree to let him hear their confessions outside the confessional. In another such  
13 ploy he sometimes inflicted pain on the boys he touched inappropriately by grabbing  
14 them with enough force to cause pain, thus allowing Flickinger to sexually gratify  
15 himself but make it appear as if he was somehow acting masculine or tough rather than  
16 as a sexual predator.

17 Flickinger engaged in such conduct at, among other places, SJMHS and a  
18 summer camp at Bass Lake, and continued this predatory behavior throughout his  
19 career as a priest. Flickinger's conduct at SJMHS was so frequent and well known that  
20 the boys at SJMHS openly discussed the fact that Flickinger was attracted to boys,  
21 warned each other to watch out for him, and gave Flickinger nicknames such "Fr.  
22 Fuckinger" and "Fr. Faggot."

23 Witness #1, a member of the SJMHS Class of 1968, met Flickinger while an  
24 underclassman. Flickinger would take the boy out of class to Flickinger's office and ask  
25 him sexual questions. Flickinger also constantly touched Witness #1, squeezing his  
26 hand with such force the boy would bend over in pain, grabbing the boy's shoulders,  
27 and digging his fingers into the boy's upper inner thigh with such pressure Witness #1  
28 had to flex his quadriceps to prevent Flickinger from digging in any deeper. Flickinger

1 also engaged in such conduct with members of the boys' swim team while serving as  
2 the team chaplain. Another member of the Class of 1968, Witness #8, considered  
3 Flickinger too "touchy-feely" with boys at SJMHS, and talked with other members of the  
4 swim team who agreed it was strange how much time Flickinger spent in the team's  
5 locker room.

6 At the end of Witness #1's sophomore year in 1966, Flickinger invited the boy  
7 to work at a camp at Bass Lake known as Camp Santa Teresita. The camp was run  
8 by the Roman Catholic Church for grade school age boys and girls. Unfortunately,  
9 Flickinger used the camp for his own sexual gratification as he invited boys from  
10 SJMHS to volunteer at the camp, and the inappropriate touching and sexual questions  
11 continued and grew worse. During the camp Flickinger seized on opportunities to  
12 isolate Witness #1, offering to teach the boy to drive, taking the boy out to dinner, or  
13 inducing the boy to enter Flickinger's residence at night.

14 Flickinger's conduct with the boy in his camp residence occurred at least once  
15 a week around 9:00 p.m., and paralleled his conduct during the incidents at SJMHS.  
16 Specifically, Flickinger sometimes unilaterally made the meetings confessional. During  
17 others he did not. But almost inevitably, and regardless of the context he  
18 manufactured, Flickinger would question Witness #1 about masturbation, a subject the  
19 boy had no interest in discussing and that Flickinger had no legitimate basis about  
20 which to ask, and was for Flickinger's own sexual gratification. All of this took place  
21 while Flickinger touched the boy inappropriately.

22 The following school year, 1966-67, another SJMHS student, Witness #2, began  
23 avoiding Flickinger after the priest repeatedly sat or stood next to the boy at school  
24 whenever the opportunity arose, and then grabbed the boy's upper thighs. On one  
25 such occasion Flickinger said "wow, no wonder you're such a good football player,  
26 you've got legs like this." Upon standing up Flickinger would hug Witness #2 so closely  
27 and for so long it made the boy uncomfortable. Like so many other SJMHS students,  
28 Flickinger called Witness #2 into his office on more than one occasion and asked him

1 sexual questions. Once, after a student government meeting, Flickinger induced the  
2 boy to come to his office. Fearing further inappropriate touching and sexual questions  
3 by Flickinger, Witness #2 claimed he could not meet with Flickinger because he had  
4 to go home immediately. Despite this, Flickinger spent the next thirty minutes  
5 questioning Witness #2 about his relationships with girls, the fact he had heard Witness  
6 #2 was dating a girl, and about whether he was sexually active with the girl. Flickinger's  
7 sexually predatory conduct toward the boys at SJMHS was so open and well known  
8 that other boys warned Witness #2 to stay away from Flickinger.

9 While working during the summer with Flickinger at Camp Santa Teresita,  
10 Flickinger questioned Witness #2 about masturbation, again asked the boy about his  
11 relationship with a girl, and then returned to questioning the boy about masturbation.  
12 Witness #2 watched Flickinger calling the boy's classmates into Flickinger's office at  
13 the camp that summer, one after another, for similar treatment.

14 During the junior and senior years of Witness #3, Class of 1969, Flickinger took  
15 the boy out of class to his office so often that Witness #3 and his friends joked about  
16 it. At the start of these incidents Flickinger would first grip Witness #3's hand with such  
17 force the boy's knees almost buckled. Once they sat down Flickinger would place his  
18 hand on the boy's shoulder, upper arm, or lower thigh, sometimes squeezing the boy's  
19 knee while questioning him about whether he masturbated. During these incidents  
20 Flickinger often attempted to create a false appearance of propriety for his questions  
21 by asking the boy if he wanted Flickinger to hear his confession. Witness #3 never  
22 asked Flickinger to hear his confession or brought up masturbation, but Flickinger  
23 always raised the subject. When Flickinger finished his questions he would hug the boy  
24 and stare at him for so long it made the boy uncomfortable. Later, when Witness #3  
25 had a girlfriend, Flickinger questioned the boy about sex and arousal, as well as about  
26 masturbation. Similar incidents also took place while Witness #3 was at the summer  
27 camp with Flickinger before the boy's senior year.

28 Flickinger also called Witness #4, Class of 1968, to his office and asked the boy



1 personal questions about sex and masturbation. Because of the frequency and nature  
2 of Flickinger's conduct, Witness #4 and his friends began calling Flickinger "Fr.  
3 Fuckinger." After observing and being subjected to Flickinger's inappropriate conduct  
4 at SJMHS, Witness #4 soon concluded it was only a matter of time before Flickinger  
5 was arrested for child molestation.

6 Flickinger often put his arm around Witness #5, Class of 1968, and tried to  
7 induce the boy to come to Flickinger's office. The boy refused as he was disturbed by  
8 his observations of the frequency and the ways in which Flickinger touched other boys  
9 at SJMHS, and thought Flickinger's behavior was bizarre.

10 Flickinger called Witness #6, Class of 1968, into his office and asked the boy if  
11 he masturbated. When Witness #6 said he never did and did not discuss his sexual  
12 conduct, Flickinger appeared to lose interest and ended the conversation. Witness #6  
13 was aware of his classmates making comments that suggested Flickinger was  
14 someone to watch out for because he might be sexually attracted to male students.

15 Despite years of open and obvious inappropriate conduct by Flickinger, the  
16 SJMHS faculty and staff – all agents of the Fresno Defendants – continued to allow the  
17 priest to enter freshmen classrooms, among others, and hand-pick boys, such as  
18 Witness #7 (Class of 1971), to take to his office, claiming they needed "counseling" or  
19 "spiritual guidance." Other times Flickinger would say to Witness #7, "I'm the Chaplain,  
20 I need to get to know you," and then order the boy to his office. The faculty and staff  
21 allowed Flickinger to engage in such conduct throughout Witness #7's freshman year  
22 despite the fact it was clear Flickinger was not pulling every boy out of class, but was  
23 targeting only those boys he found most attractive and/or believed would be vulnerable.

24 Flickinger also continued to exploit penitential communications in order to cloak  
25 his inappropriate intentions and conduct. Specifically, the first thing Flickinger would  
26 ask Witness #7, once he had the boy in his office, was, "When was the last time you  
27 went to confession?" Each time Flickinger ordered Witness #7 to his office, he ordered  
28 Witness #7 to give his confession, a fact that made Witness #7 very uncomfortable as

1 it was the first time he ever gave his confession outside the confessional. At the start  
2 of each incident Flickinger would say, "If you don't mind, I'm going to put my hand on  
3 your knee so I can really focus on what you're telling me." Witness #7 would then  
4 dutifully confess, and as soon as Witness #7 mentioned masturbation, Flickinger would  
5 ask, "What do you think about during masturbation? Tell me more." Like Witness #10,  
6 also a member of the Class of 1971, Flickinger's sexual questions made Witness #7  
7 very uncomfortable, and led him to conclude Flickinger was questioning boys to  
8 determine how vulnerable they were to further abuse. Flickinger appeared always to  
9 be looking for excuses to redirect his conversations with boys at SJMHS to sex. For  
10 instance, after noting that Witness #12, Class of 1969, chewed his fingernails,  
11 Flickinger used this as an excuse to ask if it was a sign of the boy masturbating.

12         Additionally, in what may have been one of Fr. Flickinger's earliest attempts at  
13 such a ploy, Flickinger took a request from a student for guidance regarding what  
14 school a student should attend and attempted to use it to isolate and sexually abuse  
15 the boy. Specifically, during Witness #7's senior year he asked Flickinger to assist him  
16 in gaining admission to Santa Clara. Flickinger, however, told the boy they needed to  
17 meet in person so that he could talk to Witness #7 and get a better feel for Witness #7's  
18 character. As with Plaintiff over thirty years later, Flickinger wanted to pick Witness #7  
19 up at his parent's house and take the boy to lunch. However, having learned from his  
20 past experiences with Flickinger, Witness #7 refused. Witness #7 also was afraid his  
21 friends, who referred to Flickinger as "Father Fag" as a result of Flickinger's conduct  
22 toward the boys at SJMHS, would see Flickinger pick him up and tease Witness #7  
23 about going on a date with Flickinger.

24         Flickinger traumatized Witness #9, Class of 1968, with questions about  
25 masturbation during the boy's junior or senior years at SJMHS. These incidents took  
26 place at various locations around the school, and at least once during an open (no  
27 screen was present) face-to-face confession Flickinger induced the boy to give outside  
28 the confessional. During this event, Flickinger wanted information about the boy's

1 masturbatory habits that included questions concerning frequency and visual fantasies.  
2 This incident had a tremendous emotional effect that still continues today. Equally  
3 troubling was the frequency with which Flickinger openly touched the boy's arms,  
4 shoulders, and upper thighs, doing so whether Witness #9 was standing or sitting.  
5 Most disturbing to Witness #9 is the fact that an identifiable trigger elicited a flash  
6 image where he is alone with Flickinger who is lying on a bed or a cot that is covered  
7 with an olive-green blanket and is naked. The surroundings in the image make Witness  
8 #9 think this occurred in a cabin at Camp Teresita, Bass Lake where the witness  
9 worked during the summer of 1968. Witness #9 is unable to remember what if anything  
10 happened or why such a circumstance arose, nor why such an image would be  
11 triggered in his mind.

12         Witness #10, a student from the Class of 1969 and an ardent supporter of  
13 Flickinger, acknowledges that Flickinger touched him like many of the boys described  
14 above, but attributes this behavior to Flickinger reaching out for companionship.  
15 Witness #10 admits Flickinger's behavior was unusual because, at that time, it was  
16 socially unacceptable for males to touch each other.

17         It was so apparent to another member of the Class of 1971, Witness #11, that  
18 Flickinger's behavior with SJMHS boys was inappropriate that on several occasion  
19 Witness #11 considered reporting Flickinger to Defendant Fresno Bishop. Witness #11  
20 was particularly disturbed by Flickinger's inappropriate behavior that began when  
21 Witness #11 was fourteen at SJMHS and continued – unabated by the Fresno  
22 Defendants' agents – until Witness #11 was around sixteen. During those years  
23 Flickinger repeatedly ordered Witness #11 to Flickinger's office, and asked Witness #11  
24 if he masturbated, and what he thought about when he masturbated. Witness #11  
25 understood sex to be something they were not supposed to discuss and, as a result,  
26 always tried to change the subject when Flickinger brought it up, or to avoid it  
27 altogether. Witness #11's efforts failed as Flickinger always redirected their  
28 conversations to sex. At the end of these discussions Flickinger would try to hug

1 Witness #11, and induced the boy to submit by telling Witness #11 it was ok for men  
2 to hug. Witness #11 believes Flickinger's sole motivation for ordering Witness #11 to  
3 his office was to discuss sex and masturbation. Flickinger's conduct was so frequent  
4 and so extreme that Witness #11 and his friends concluded Flickinger was sexually  
5 attracted to boys.

6 When Witness #13, Class of 1970, was fifteen, Flickinger came to his house  
7 when the boy's parents were gone and began asking the boy whether he masturbated.  
8 Witness #14 was so surprised and overwhelmed he shut down and did not answer. He  
9 also wondered why Flickinger was asking him about masturbation, and what business  
10 a priest had asking such questions. Even at his young age, Witness #13 concluded the  
11 questions were inappropriate, and Flickinger eventually stopped asking when Witness  
12 #13 did not respond.

13 Flickinger also used to call Witness #14, another member of the Class of 1970,  
14 into his office and ask whether the boy was involved in sexual relations and whether he  
15 was masturbating. On one occasion Flickinger placed his hand on the boy's knee,  
16 making Witness #14 feel very uncomfortable, and prompting the boy to instinctively and  
17 defensively tense up and clench his fist. This reaction prompted Flickinger to stop, and  
18 to never call the boy into his office again. Flickinger's openly inappropriate conduct with  
19 boys at the school prompted Witness #14 and his friends to refer to Flickinger as "Fr.  
20 Fag."

21 After Witness #14 graduated from SJMHS he enrolled at Santa Clara University  
22 in what was then part of the Archdiocese of San Francisco. While a student, Witness  
23 #14 began volunteering at Defendant Archbishop's youth outreach program. In or  
24 around 1972, when Witness #14 was approximately nineteen years old, he  
25 inadvertently placed Defendant Archbishop's agents on notice that Flickinger had been  
26 accused of engaging in inappropriate sexual conduct with boys at SJMHS. Specifically,  
27 Flickinger's name was mentioned during a volunteer staff meeting and Witness #14  
28 openly referred to Flickinger as "Fr. Fag," explaining that was the nickname his friends

1 at SJMHS had given Flickinger. Within a day of making this comment to the staff,  
2 Flickinger appeared and confronted Witness #14 with a man who claimed to be a  
3 private investigator. Flickinger then demanded that Witness #14 sign a document  
4 stating that Flickinger had never made any sexual advances towards Witness #14, and  
5 threatened that if Witness #14 did not sign, he (Flickinger) would have Witness #14  
6 expelled from Santa Clara and would either sue him or have him criminally prosecuted.  
7 Feeling threatened, humiliated, and scared of being expelled or worse, Witness #14  
8 submitted to the priest's demands and signed. Flickinger told Witness #14 the letter  
9 would go into his (Flickinger's) personnel file. Most important, at least two priests from  
10 the Archdiocese subsequently learned of the incident and apologized to Witness #14.  
11 However, Defendant Archbishop took no further action and Flickinger continued his  
12 ministry.

13 Flickinger also exploited the relationships he developed with students at SJMHS,  
14 later preying upon at least one child of a SJMHS graduate with whom Flickinger had  
15 maintained a relationship. Specifically, the son of a member of the Class of 1966  
16 reported an incident of inappropriate conduct by Flickinger, only to have his mother and  
17 aunt dismiss the boy's report and support Flickinger.

18 In the 1990s Flickinger was assigned to Defendant Parish St. Frances Cabrini  
19 in what had been part of the Archdiocese of San Francisco but was now in the Diocese  
20 of San Jose. With no warning to the parishioners, and having never been reported to  
21 law enforcement, criminally prosecuted, or forced to register as a sex offender,  
22 Flickinger was unidentifiable to the parishioners as a predator. Instead, he was free to  
23 use the power, respect and authority he enjoyed as a Roman Catholic priest to continue  
24 his exploitation of young boys at Defendant Parish and Defendant School.

25 At Defendant Parish and Defendant School Fr. Flickinger continued his decades  
26 of decades of childhood sexual abuse with little, if any, objections from the San Jose  
27 Defendants' agents, despite the fact they were observing the same if not worse  
28 inappropriate conduct that Flickinger had openly engaged in since the 1960s. Once

1 again, the boys who were subjected to this conduct recognized it as disturbing and  
2 inappropriate, while Defendants' agents allowed such conduct to continue. For  
3 instance, Witness #15, a former student at Defendant School, quickly concluded  
4 Flickinger was "overly friendly," "too huggy," and, as a result "kind of creepy." Witness  
5 #15 was never comfortable with the priest. Witness #15's mother, Witness #16, recalls  
6 that her children left whenever Fr. Flickinger appeared at their home. As a result of her  
7 observations of Flickinger's conduct, Witness #16 did not allow her children to be alone  
8 with Flickinger.

9       Witness #17's sons served as altar boys for Flickinger, and felt that Flickinger  
10 was strange. Flickinger often came by her house when her children were home alone,  
11 and Witness #17 was so disturbed by Flickinger's behavior that she told her children  
12 never to let him in. Flickinger also tried to convince her to let him take at least one of  
13 them on an overnight trip to visit an out of state college, but Witness #17 refused. She  
14 also refused to allow him to be alone with her children in a variety of other  
15 circumstances, and was hypervigilant when she could not prevent it. For instance,  
16 when her boys served as altar boys with Flickinger at Defendant Parish, Witness #17  
17 would count the seconds they were alone in the sacristy with Flickinger.

18       Flickinger's conduct often made Witness #18 uncomfortable. Witness #18 was  
19 a student at Defendant School and one of Flickinger's altar boys at Defendant Parish,  
20 Flickinger exploited the boy's status as a child of a devout Roman Catholic mother in  
21 a single-parent family with no paternal figure. The incidents with Flickinger most often  
22 occurred when the boy's mother was away and he was most vulnerable. Witness #19,  
23 the boy's mother, had granted Flickinger permission to visit the boy while she was  
24 gone. On these occasions, much as he did with boys from SJMHS in Fresno,  
25 Flickinger would sit the boy down, place his hand on the boy's knee, and begin asking  
26 the boy questions about whether his sexual organs worked, and about the boy  
27 masturbating. Throughout these incidents Flickinger was constantly touching the boy,  
28 and at their conclusion Flickinger gave the boy long, exaggerated hugs that made

1 Witness #18 very uncomfortable. Flickinger subjected the boy to similar conduct – long  
2 exaggerated hugs – in the back room at Defendant Parish where Flickinger and the  
3 altar boys disrobed after performing mass. Flickinger also took the boy on a trip to visit  
4 a college outside of California, and on at least one occasion took him upstairs to a  
5 private area in Defendant Parish where Flickinger sometimes took other boys. The San  
6 Jose Defendants allowed this conduct to occur despite the fact it was forbidden by the  
7 San Jose Defendants.

8 Flickinger took another boy from Defendant School and Defendant Parish,  
9 Witness #20, out to a lunch that purportedly was to counsel the boy regarding possible  
10 schools to attend, but instead was for Flickinger's own sexual gratification. Rather than  
11 counsel the boy regarding schools, Flickinger spent much of the lunch talking about the  
12 physical appearances of Witness #20 and of another boy from Defendant School,  
13 obsessing to the point that Witness #20 became uncomfortable. After the lunch  
14 Flickinger began calling Witness #20's cell phone with such frequency that the boy  
15 stopped taking Flickinger's calls. Flickinger was so obsessed with the boy that he  
16 wrote Witness #20 and told him to show some respect by answering his phone.  
17 Flickinger's conduct was so extreme that when Flickinger offered to take Witness #20  
18 on an overnight visit to a school outside of California, Witness #20's girlfriend  
19 commented on Flickinger's bizarre behavior, and expressed her opinion to Witness  
20 #20's mother that Flickinger should never be allowed near the boy again.

21 In Spring of 2009 Flickinger admitted to Witness #21, a parent from Defendant  
22 School and Defendant Parish, that he had been accused of sexual abuse and had  
23 been asked to leave the parish as a result.

24 Witness #22, a parent at Defendant School, had long been disturbed by the fact  
25 Flickinger was always taking, or trying to take, children from Defendant Parish on  
26 overnight trips to out of state schools, and thought his behavior was bizarre. She also  
27 observed and was uncomfortable with Flickinger's relationship with Witness #18. In  
28 May of 2009 Witness #22 reported her concern to an agent of Defendant School, and

1 said she feared Flickinger had sexually abused children, prompting the agent to  
2 acknowledge that her own son, a former parishioner at Defendant Parish, had never  
3 liked Flickinger, and that she was aware of others parents and children at Defendant  
4 Parish and Defendant School who were uncomfortable with Flickinger.

5 In addition to the inappropriate touching, the San Jose Defendants allowed  
6 Flickinger to engage in conduct at Defendant School and Defendant Parish that was  
7 forbidden by the San Jose Defendants. For instance, although children were not  
8 allowed in a priest's living quarters for any reason, the San Jose Defendants allowed  
9 Flickinger to break this rule repeatedly with Plaintiff and boys such as Witness #18.  
10 Similarly, it was and is inappropriate for a priest to pull a boy out of class, take him to  
11 the priest's office, and then have the boy give his confession. Asking a child about  
12 masturbation, and probing into anyone, much less a child's, sex life by initiating  
13 questions about sex is a grave violation of both Roman Catholic moral theology and  
14 priestly training. Nevertheless, Defendants allowed Flickinger regularly to engage in  
15 such conduct since the 1960s. Additionally, at Defendant School and Defendant Parish  
16 Flickinger was seen regularly with boys in his company in inappropriate circumstances,  
17 such as in his car and in the rectory.

18 This conduct did not go unnoticed by the San Jose Defendants, who apparently  
19 placed some limitations on Flickinger's ministry as a result. For instance, in  
20 approximately 2005 Flickinger admitted to at least one parent, Witness #23, that the  
21 San Jose Defendants had placed some limitations on his ministry such as not allowing  
22 him to drive. However, it was not until he was transferred from Defendant Parish that  
23 more severe restrictions were placed on his ministry. Specifically, Flickinger was sent  
24 to a northern California retreat house where children were not allowed, and was only  
25 permitted to serve mass to the nuns in residence. However, Defendants offered no  
26 warning to the public, made no reports to law enforcement, and their restrictions on  
27 Flickinger's ministry came far too late to prevent his abuse of boys such as Plaintiff.

28



1 **Flickinger's Abuse of Plaintiff**

2 Plaintiff was raised in a devout Catholic family that attended mass every Sunday.  
3 Plaintiff served as an altar boy, most often for Fr. Flickinger, the man who Plaintiff first  
4 identified with the priesthood, and who was, from Plaintiff's childhood perspective, the  
5 archetype for all priests. Plaintiff's family was very active in Defendant Parish, and Fr.  
6 Flickinger came to their house for dinner on more than one occasion. Flickinger was  
7 the only priest with which Plaintiff spoke at the parish, and had become, at least to  
8 Plaintiff, the face of the parish and his church, and the voice of God.

9 As Plaintiff grew older and began to mature physically, Flickinger's behavior  
10 towards him changed. Flickinger had always been very touchy with the boy when  
11 speaking to him, and often placed his hands on the boy's upper thighs. At the end of  
12 their conversations, Flickinger almost always gave Plaintiff long hugs in which he pulled  
13 the boy close to him, and which began to feel to Plaintiff like more than hugs.  
14 Eventually Flickinger's questioning became sexual as he began questioning Plaintiff  
15 about his interest in girls, and about masturbation. Plaintiff was extremely shy, never  
16 raised these subjects himself, and would try to avoid them when Flickinger did so,  
17 sometimes outright denying any awareness of them. Flickinger ignored Plaintiff's  
18 efforts, however, and Plaintiff recalls that approximately half of their conversations  
19 involved Flickinger questioning Plaintiff about sexual matters such as masturbation and  
20 how he felt about girls. More often than not Flickinger questioned Plaintiff while they  
21 were in the sacristy, or sometimes during confession. All of this conduct made Plaintiff  
22 increasingly nervous and uncomfortable around Flickinger. However, because of the  
23 reverence he had for Flickinger, as the first and most important priest in his life, he  
24 continued to trust the man.

25 In late 2001 when Plaintiff was in 8<sup>th</sup> grade, Flickinger took Plaintiff to lunch,  
26 purportedly to counsel the boy regarding schools to attend. Plaintiff expected that after  
27 lunch Flickinger would drive him home. Instead, without explanation, Flickinger drove  
28 them back to Defendant Parish and took the boy straight to the rectory. Although

1 Flickinger's conduct was unexpected, Plaintiff assumed Flickinger wanted only to  
2 continue their discussion. Plaintiff had always viewed priests, and especially Flickinger,  
3 in a positive light, and was not concerned that Flickinger was taking them to his living  
4 quarters. When Flickinger directed Plaintiff into his bedroom Plaintiff remained  
5 completely trusting of the priest and did not object. Unfortunately, Flickinger exploited  
6 that trust and sexually abused Plaintiff after inducing the boy to sit on his (Flickinger's)  
7 bed.

8 Plaintiff eventually reported Flickinger's abuse to law enforcement and an  
9 investigation was conducted by the San Jose Police Department. However, because  
10 the San Jose Defendants had learned of and warned Flickinger of the investigation,  
11 Flickinger was prepared when the lead detective instructed Plaintiff to make a pretext  
12 call to Flickinger. Flickinger sounded calm and unsurprised when Plaintiff called and  
13 confronted him, and denied all of the events surrounding his abuse of Plaintiff.

14 The San Jose Defendants eventually transferred Flickinger from Defendant  
15 Parish, and he was temporarily in residence at a retreat center in Northern California  
16 where he was only allowed to perform mass to the nuns in residence. However,  
17 Defendant San Jose Bishop later transferred Flickinger once again, this time to one of  
18 Defendant Archbishop's parishes, St. Paul in San Francisco, a parish with an  
19 elementary school with children the same age that Plaintiff was during the period of  
20 abuse. Flickinger currently is in residence at that parish and school, both of which  
21 remain dangerously unaware of Flickinger's history despite the fact Defendant  
22 Archbishop has been aware of Fr. Flickinger's propensities at least since Flickinger  
23 confronted Witness #14 in the early 1970s and attempted to force Witness #14 to clear  
24 his (Flickinger's) name with regards to Flickinger's misconduct towards Witness #14  
25 while the boy was a student at SJMHS.

26 The consequences of the Defendants' continuing corporate practices with  
27 regards to their perpetrators, as illustrated by their handling of Fr. Flickinger, have been  
28 disastrous both for children, and for a society that continues to bear the financial

1 burden of the psychological fallout for abuse survivors. Abuse survivors often engage  
2 in addictive, self-destructive, and, unfortunately, sometimes criminal behavior as they  
3 deal with the psychological scars caused by childhood sexual abuse. These behaviors  
4 in turn result in things such as divorce proceedings on court calendars, substance  
5 abuse, arrests, and incarcerations, all of which are paid for by the common taxpayer  
6 rather than by the truly culpable but tax-exempt organizations that protected,  
7 transferred and/or expelled perpetrators such as Fr. Flickinger.

8 7. Time and again Defendants have had the opportunity to end the cycle of abuse  
9 by reporting perpetrators such as Flickinger to law enforcement, by assisting rather than  
10 obstructing criminal investigations such as those of Fr. Flickinger, and by warning the  
11 general public when a priest has been accused of sexually assaulting a child.  
12 Tragically, the Defendants' ongoing efforts to protect their pedophilic members, and to  
13 protect their financial interests, establish a continuing pattern of conduct causing new  
14 harm to today's children, new trauma to adult survivors of childhood sexual abuse, and  
15 causing the continuing financial burden to a society paying for the resulting  
16 psychological fallout.

17 8. For decades, if not far longer, Defendants have known perpetrators such as Fr.  
18 Flickinger were sexually assaulting children, and of the fact any child exposed to their  
19 agents was at a heightened risk of being sexually assaulted. Since that time  
20 Defendants have been concealing these crimes, and shielding their criminal members  
21 from discovery and/or prosecution.

22

23 **THE COMPELLING STATE INTEREST IN PREVENTING CHILDHOOD SEXUAL**  
24 **ABUSE**

25 9. California courts and the state legislature have recognized, repeatedly, the  
26 compelling state interested in preventing childhood sexual abuse. In re The Clergy  
27 Cases I, 188 Cal.App.4th 1224 (2010) ("all citizens have a compelling interest in  
28 knowing if a prominent and powerful institution has cloaked in secrecy decades of

1 sexual abuse"); Fredenburg v. Fremont, 119 Cal.App.4th 408, 412-13 (2004)  
2 (discussing enactment and legislative history of Megan's Law); Burt v. County of  
3 Orange, 120 Cal.App.4th 273, 285 (2004) ("concerns with protecting children from harm  
4 is a compelling interest supporting its efforts in gathering information and filing reports  
5 concerning persons suspected of child abuse"); Roe v. Superior Court, 229 Cal.App.3d  
6 832, 838 (1991) (recognizing the state's compelling interest in protecting children from  
7 abuse); People v. Gonzalez, 81 Cal.App.3d 274, 277 (1978) (recognizing compelling  
8 state interest in the protection of children from sexual molestation); People v. Mills, 81  
9 Cal. App.3d 171, 181 (1978) (person who sexually assaults a child has waived his right  
10 to privacy). However, for decades the Defendants have successfully frustrated law  
11 enforcement efforts to enforce this compelling state interest, shielding perpetrators from  
12 criminal prosecution. Time and again the Defendants' efforts have helped such  
13 criminals escape prosecution by concealing their crimes until the expiration of the  
14 applicable criminal statutes of limitation, or by warning them of investigations by law  
15 enforcement. The conduct involving Fr. Flickinger is but one example of this continuing  
16 pattern of conduct. But for the San Jose Defendants warning to Flickinger of the  
17 criminal investigation, Flickinger most likely would have been unprepared for and  
18 surprised by the San Jose Police Department's pretext call. Instead, not only was  
19 Flickinger expecting such a call, he was prepared to deny each and every allegation.  
20 The end result of Defendants' conduct is Flickinger remains unregistered as a sex-  
21 offender, and unidentifiable to the public and to the parishioners at St. Paul as a  
22 predator.

23  
24 **FIRST CAUSE OF ACTION**

25 **PUBLIC NUISANCE**

26 **(Against All Defendants)**

- 27 10. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.  
28 11. Defendants continue to conspire and engage in efforts to: 1) conceal from the

1 general public the sexual assaults committed by, the identities of, and the  
2 pedophilic/ephebophilic tendencies of, Fr. Flickinger and Defendants' other pedophilic  
3 agents; 2) attack the credibility of the victims of Fr. Flickinger and Defendants' other  
4 pedophilic/ephebophilic agents; 3) protect Fr. Flickinger and Defendants' other  
5 pedophilic/ephebophilic current and former agents from criminal prosecution and  
6 registration as sex offenders for their sexual assaults against children; and 4) after  
7 receiving reports or notice of misconduct by men such as Fr. Flickinger, transferring  
8 them to new parishes without any warning to parishioners of the threat posed by such  
9 men, all in violation of law.

10 12. The negligence and/or deception and concealment by Defendants was and is  
11 injurious to the health of, indecent or offensive to the senses of, and an obstruction to  
12 the free use of property by, the general public, including but not limited to residents of  
13 the Counties of Fresno, Santa Clara, and San Francisco and all other members of the  
14 general public who live in communities where Defendants conducted, and continue to  
15 conduct, their work and/or ministry, and was and is indecent and offensive to the  
16 senses, so as to interfere with the general public's comfortable enjoyment of life in that  
17 children cannot be left unsupervised in any location where Defendants' agents are  
18 present as the general public cannot trust Defendants to prohibit their pedophilic agents  
19 from supervising, caring for, or having any contact with children, nor to warn parents of  
20 the presence of the pedophilic agents of Defendants, nor to identify their pedophilic  
21 agents, nor to identify and/or report to law enforcement their agents accused of  
22 childhood sexual abuse, nor to refrain from interfering with or obstructing the criminal  
23 investigations of these agents, thus creating an impairment of the safety of children in  
24 the neighborhoods where Defendants conducted, and continue to conduct, their work  
25 and/or ministries.

26 13. Defendants' conduct has caused further injury to the public and severely  
27 impaired the safety of children where Defendants have protected and concealed Fr.  
28 Flickinger and Defendants' other pedophilic/ephebophilic agents from criminal

1 prosecution and registration as sex offenders for their sexual assaults, where  
2 Defendants' other pedophilic/ephebophilic agents subsequently have left Defendants'  
3 employ, and where Defendants have disavowed any responsibility for Defendants'  
4 other pedophilic/ephebophilic former agents despite the fact Defendants facilitated  
5 these former agents' avoiding criminal prosecution and having to register as sex  
6 offenders. As a result of Defendants' conduct, when Defendants' former agents have  
7 sought employment placing them in positions of trust with children, Defendants are the  
8 only ones aware of the risk posed by these former agents, and potential employers,  
9 childcare custodians, and parents have no means of identifying the risk to their children  
10 posed by such men.

11 14. The negligence and/or deception and concealment by Defendants was specially  
12 injurious to Plaintiff's health as he and his family were unaware of the danger posed to  
13 children left unsupervised with agents of Defendants, and as a result of this deception,  
14 Plaintiff was placed in the custody and control of Fr. Flickinger, at the time an agent of  
15 the San Jose Defendants, who subsequently sexually assaulted Plaintiff.

16 15. The continuing public nuisance created by Defendants was, and continues to be,  
17 the proximate cause of the injuries and damages to the general public as alleged in ¶  
18 13, and of Plaintiff's special injuries and damages as alleged in ¶ 14.

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

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

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

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

22  
23 **SECOND CAUSE OF ACTION**

24 **NEGLIGENCE**

25 **(Against The San Jose Defendants)**

26 18. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

27 19. While Plaintiff was a student at Defendant School and a member of Defendant  
28 Parish, Fr. Flickinger engaged in unpermitted, harmful and offensive sexual conduct

1 and contact with Plaintiff. Said conduct was undertaken after the San Jose Defendants  
2 learned of the risk he posed to children, while Fr. Flickinger was an employee,  
3 volunteer, representative, or agent of the San Jose Defendants, and while in the course  
4 and scope of employment with the San Jose Defendants, and/or was ratified by the  
5 actions of the San Jose Defendants, including but not limited to the San Jose  
6 Defendants warning Flickinger of the criminal investigation of Flickinger's abuse of  
7 Plaintiff. The San Jose Defendants' conduct was wanton and reckless and/or  
8 evidenced a conscious disregard for the rights and safety of Plaintiff and other children.

9 20. Prior to or during the abuse alleged above, the San Jose Defendants knew, had  
10 reason to know, or were otherwise on notice of unlawful sexual conduct by Fr.  
11 Flickinger and Defendants' other pedophilic and/or ephebophilic agents. The San Jose  
12 Defendants failed to take reasonable steps and failed to implement reasonable  
13 safeguards to avoid acts of unlawful sexual conduct in the future by Fr. Flickinger and  
14 Defendants' other pedophilic and/or ephebophilic agents, including, but not limited to,  
15 preventing or avoiding placement of Fr. Flickinger and Defendants' other pedophilic  
16 and/or ephebophilic agents in functions or environments in which contact with children  
17 was an inherent part of those functions or environments. Furthermore, at no time  
18 during the periods of time alleged did the San Jose Defendants have in place a system  
19 or procedure to supervise and/or monitor employees, volunteers, representatives, or  
20 agents to insure that they did not molest or abuse minors in the San Jose Defendants'  
21 care, including the Plaintiff.

22 21. The San Jose Defendants had a duty to protect the minor Plaintiff when he was  
23 entrusted to their care by Plaintiff's parents. Plaintiff's care, welfare, and/or physical  
24 custody was temporarily entrusted to the San Jose Defendants. The San Jose  
25 Defendants voluntarily accepted the entrusted care of Plaintiff. As such, the San Jose  
26 Defendants owed Plaintiff, a minor child, a special duty of care, in addition to a duty of  
27 ordinary care, and owed Plaintiff the higher duty of care that adults dealing with children  
28 owe to protect them from harm.



1 22. Defendants, by and through their agents, servants and employees, knew or  
2 reasonably should have known of Fr. Flickinger's and Defendants' other pedophilic  
3 and/or ephebophilic agents' dangerous and exploitive propensities and that they were  
4 unfit agents. It was foreseeable that if the San Jose Defendants did not adequately  
5 exercise or provide the duty of care owed to children in their care, including but not  
6 limited to Plaintiff, the child entrusted to the San Jose Defendants' care would be  
7 vulnerable to sexual abuse by Fr. Flickinger and Defendants' other pedophilic and/or  
8 ephebophilic agents.

9 23. The San Jose Defendants breached their duty of care to the minor Plaintiff by  
10 allowing Fr. Flickinger to come into contact with the minor Plaintiff without supervision;  
11 by failing to adequately hire, supervise, or retain Fr. Flickinger and Defendants' other  
12 pedophilic and/or ephebophilic agents who they permitted and enabled to have access  
13 to Plaintiff; by failing to investigate or otherwise confirm or deny such facts about Fr.  
14 Flickinger and Defendants' other pedophilic and/or ephebophilic agents; by failing to tell  
15 or concealing from Plaintiff, Plaintiff's parents, guardians, or law enforcement officials  
16 that Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents were  
17 or may have been sexually abusing minors; by failing to tell or concealing from  
18 Plaintiff's parents, guardians, or law enforcement officials that Plaintiff was or may have  
19 been sexually abused after the San Jose Defendants knew or had reason to know that  
20 Fr. Flickinger may have sexually abused Plaintiff, thereby enabling Plaintiff to continue  
21 to be endangered and sexually abused, and/or creating the circumstance where  
22 Plaintiff was less likely to receive medical/mental health care and treatment, thus  
23 exacerbating the harm done to Plaintiff; and/or by holding out Fr. Flickinger to the  
24 Plaintiff and his parents or guardians as being in good standing and trustworthy. The  
25 San Jose Defendants cloaked within the facade of normalcy Fr. Flickinger's and  
26 Defendants' other pedophilic and/or ephebophilic agents' contact and/or actions with  
27 the Plaintiff and/or with other minors who were victims of Fr. Flickinger and Defendants'  
28 other pedophilic and/or ephebophilic agents, and/or disguised the nature of the sexual

1 abuse and contact.

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

10

11

**THIRD CAUSE OF ACTION**

12

**NEGLIGENT SUPERVISION/FAILURE TO WARN**

13

**(Against All Defendants)**

14

25. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

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26. Defendants had a duty to provide reasonable supervision of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents, and to use reasonable care in investigating Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents. Defendants also had a duty and to provide adequate warning to the Plaintiff, the Plaintiff's family, minor students, minor parishioners, and other archdioceses and/or dioceses into which they transferred Fr. Flickinger of Fr. Flickinger's and Defendants' other pedophilic and/or ephebophilic agents' dangerous propensities and unfitness, particularly after the conduct they observed by Flickinger in their respective dioceses and archdiocese before Flickinger abused Plaintiff. Additionally, because the San Jose Defendants knew or should have known of the heightened risk Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents posed to all children, the San Jose Defendants had a heightened duty to provide reasonable supervision and protection to children with whom the San Jose Defendants allowed Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents to have contact and/or

1 custody and control.

2 27. Defendants, by and through their agents, servants and employees, knew or  
3 reasonably should have known of Fr. Flickinger's and Defendants' other pedophilic  
4 and/or ephebophilic agents' dangerous and exploitive propensities and that they were  
5 unfit agents. The San Jose Defendants also knew that if they failed to provide children  
6 who had contact with Fr. Flickinger and Defendants' other pedophilic and/or  
7 ephebophilic agents sufficient supervision and protection, those children would be  
8 vulnerable to sexual assaults by Fr. Flickinger and Defendants' other pedophilic and/or  
9 ephebophilic agents. Despite such knowledge, the San Jose Defendants negligently  
10 failed to supervise Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
11 agents in the position of trust and authority as Roman Catholic Priests, religious  
12 brothers, religious instructors, counselors, school administrators, school teachers,  
13 surrogate parents, spiritual mentors, emotional mentors, and/or other authority figures,  
14 where they were able to commit the wrongful acts against the Plaintiff. The San Jose  
15 Defendants also failed to provide reasonable supervision of Fr. Flickinger and  
16 Defendants' other pedophilic and/or ephebophilic agents. All of the Defendants failed  
17 to use reasonable care in investigating Fr. Flickinger and Defendants' other pedophilic  
18 and/or ephebophilic agents, and failed to provide adequate warning to other  
19 archdioceses and/or dioceses into which they transferred Fr. Flickinger, and to Plaintiff  
20 and Plaintiff's family of Fr. Flickinger's and Defendants' other pedophilic and/or  
21 ephebophilic agents' dangerous propensities and unfitness. The San Jose Defendants  
22 further failed to provide Plaintiff with adequate supervision and protection, and failed  
23 to take reasonable measures to prevent future sexual abuse. Defendants' conduct was  
24 wanton and reckless and/or evidenced a conscious disregard for the rights and safety  
25 of Plaintiff and other children.

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

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

8  
9 **FOURTH CAUSE OF ACTION**

10 **NEGLIGENT HIRING/RETENTION**

11 **(Against The San Jose Defendants)**

12 29. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

13 30. The San Jose Defendants had a duty not to hire and/or retain Fr. Flickinger and  
14 Defendants' other pedophilic and/or ephebophilic agents given their dangerous and  
15 exploitive propensities.

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

1 The San Jose Defendants further failed to take reasonable measures to prevent future  
2 sexual abuse. The San Jose Defendants' conduct was wanton and reckless and/or  
3 evidenced a conscious disregard for the rights and safety of Plaintiff and other children.

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

14  
15 **FIFTH CAUSE OF ACTION**

16 **FRAUD**

17 **(Against The San Jose Defendants)**

18 33. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

19 34. The San Jose Defendants knew and/or had reason to know of the sexual  
20 misconduct of Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

21 35. The San Jose Defendants misrepresented, concealed or failed to disclose  
22 information relating to sexual misconduct of Fr. Flickinger and Defendants' other  
23 pedophilic and/or ephebophilic agents as described herein, and the San Jose  
24 Defendants continue to misrepresent, conceal, and fail to disclose information relating  
25 to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or  
26 ephebophilic agents as described herein.

27 36. The San Jose Defendants knew that they misrepresented, concealed or failed  
28 to disclose information relating to sexual misconduct of Fr. Flickinger and Defendants'

1 other pedophilic and/or ephebophilic agents.

2 37. Plaintiff justifiably relied upon the San Jose Defendants for information relating  
3 to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or  
4 ephebophilic agents.

5 38. The San Jose Defendants, with the intent to conceal and defraud, did  
6 misrepresent, conceal or fail to disclose information relating to the sexual misconduct  
7 of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

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

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

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**SIXTH CAUSE OF ACTION**  
**FIDUCIARY/CONFIDENTIAL RELATIONSHIP FRAUD**  
**AND CONSPIRACY TO COMMIT FRAUD**  
**(Against The San Jose Defendants)**

41. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

42. Because of Plaintiff's young age, and because of the status of Fr. Flickinger as an authority figure to Plaintiff, Plaintiff was vulnerable to Fr. Flickinger. Fr. Flickinger sought Plaintiff out, and was empowered by and accepted Plaintiff's vulnerability. Plaintiff's vulnerability also prevented Plaintiff from effectively protecting himself.

43. By holding Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents out as a qualified Roman Catholic clergy, religious brothers, religious instructors, counselors, school administrators, school teachers, surrogate parents, spiritual mentors, emotional mentors, medical services providers and/or care givers, and/or other authority figures, and by undertaking the religious and/or secular instruction and/or spiritual and emotional counseling of Plaintiff, the San Jose Defendants held special positions of trust and entered into a fiduciary and/or confidential relationship with the minor Plaintiff.

44. Having a fiduciary and/or confidential relationship, the San Jose Defendants had the duty to obtain and disclose information relating to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

45. Defendants misrepresented, concealed or failed to disclose information relating to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents, and the San Jose Defendants continued to misrepresent, conceal, and/or fail to disclose information relating to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents as described herein.

46. The San Jose Defendants knew that they misrepresented, concealed or failed to disclose information relating to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

1 47. Plaintiff justifiably relied upon the San Jose Defendants for information relating  
2 to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or  
3 ephebophilic agents.

4 48. The San Jose Defendants, in concert with each other and with the intent to  
5 conceal and defraud, conspired and came to a meeting of the minds whereby they  
6 would misrepresent, conceal or fail to disclose information relating to the sexual  
7 misconduct of Fr. Flickinger and/or Defendants' other pedophilic and/or ephebophilic  
8 agents.

9 49. By so concealing, the San Jose Defendants committed at least one act in  
10 furtherance of the conspiracy.

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

22 51. In addition, when Plaintiff discovered the fraud of the San Jose Defendants, and  
23 continuing thereafter, Plaintiff experienced recurrences of the above-described injuries.  
24 In addition, when Plaintiff finally discovered the fraud of the San Jose Defendants, and  
25 continuing thereafter, Plaintiff experienced extreme and severe mental and emotional  
26 distress that Plaintiff had been the victim of the San Jose Defendants' fraud; that  
27 Plaintiff had not been able to help other minors being molested because of the fraud;  
28 and that Plaintiff had not been able because of the fraud to receive timely medical



1 treatment needed to deal with the problems Plaintiff had suffered and continues to  
2 suffer as a result of the molestations.

3  
4 **SEVENTH CAUSE OF ACTION**

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

6 **(Against The San Jose Defendants)**

7 52. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

8 53. Because of Plaintiff's young age, and because of the status of Fr. Flickinger as  
9 an authority figure to Plaintiff, Plaintiff was vulnerable to Fr. Flickinger. Fr. Flickinger  
10 sought Plaintiff out, and was empowered by and accepted Plaintiff's vulnerability.  
11 Plaintiff's vulnerability also prevented Plaintiff from effectively protecting himself.

12 54. By holding Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
13 agents out as a qualified Roman Catholic clergy, religious brothers, religious instructors,  
14 counselors, school administrators, school teachers, surrogate parents, spiritual  
15 mentors, emotional mentors, medical services providers and/or care givers, and/or any  
16 other authority figure, by allowing Fr. Flickinger to have custody and control of and/or  
17 contact with the Plaintiff, and by undertaking the religious and/or secular instruction  
18 and/or spiritual and/or emotional counseling and/or medical care of Plaintiff, the San  
19 Jose Defendants entered into a fiduciary and/or confidential relationship with the minor  
20 Plaintiff.

21 55. The San Jose Defendants and each of them breached their fiduciary duty to  
22 Plaintiff by engaging in the negligent and wrongful conduct described herein.

23 56. As a direct result of the San Jose Defendants' breach of their fiduciary duty,  
24 Plaintiff has suffered, and continues to suffer great pain of mind and body, shock,  
25 emotional distress, physical manifestations of emotional distress, embarrassment, loss  
26 of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and  
27 continues to suffer spiritually; was prevented and will continue to be prevented from  
28 performing Plaintiff's daily activities and obtaining the full enjoyment of life; has

1 sustained and will continue to sustain loss of earnings and earning capacity; and/or has  
2 incurred and will continue to incur expenses for medical and psychological treatment,  
3 therapy, and counseling. As a proximate result of these injuries, Plaintiff has suffered  
4 general and special damages in an amount in excess of the jurisdictional minimum of  
5 this Court.

6  
7 **EIGHTH CAUSE OF ACTION**

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

9 **(Against The San Jose Defendants)**

10 57. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

11 58. The San Jose Defendants breached their duty to take reasonable protective  
12 measures to protect Plaintiff and other minor parishioners and/or students from the risk  
13 of childhood sexual abuse by Fr. Flickinger and/or Defendants' other pedophilic and/or  
14 ephebophilic agents, such as the failure to properly warn, train, or educate Plaintiff, his  
15 parents, the San Jose Defendants' agents, employees and volunteers, and other minor  
16 parishioners and/or students about how to avoid such a risk and/or defend himself or  
17 herself if necessary, pursuant to Juarez v. Boy Scouts of America, Inc., 81 Cal.App.4th  
18 377 (2000). The San Jose Defendants' conduct was wanton and reckless and/or  
19 evidenced a conscious disregard for the rights and safety of Plaintiff and other children.

20 59. The San Jose Defendants knew, or in the exercise of reasonable diligence  
21 should have known, of the general risk of sexual assaults against children and,  
22 specifically, of Fr. Flickinger's and Defendants' other pedophilic and/or ephebophilic  
23 agents' propensities to commit, and history of committing, sexual abuse of children, and  
24 that an undue risk to children in their custody and care, such as Plaintiff, would exist  
25 because of this propensity to commit sexual assaults, and the history of sexual assaults  
26 against children, unless the San Jose Defendants adequately taught, educated,  
27 secured, oversaw, and maintained students, including Plaintiff, as well as other children  
28 in the custody and control of, or in contact with, Catholic clergy and Defendants' other

1 pedophilic and ephebophilic agents. Future agents of the San Jose Defendants were  
2 put on actual and/or constructive notice, at least as early as 1972, that Fr. Flickinger  
3 and Defendants' other pedophilic and/or ephebophilic agents were sexually assaulting  
4 children at countless locations, including Fresno County, and, subsequently, Santa  
5 Clara County among others. From that date forward, current and/or future agents of  
6 the San Jose Defendants repeatedly and negligently ignored complaints from victims  
7 and/or their parents, as well as warnings from Catholic clergy, that Fr. Flickinger and  
8 Defendants' other pedophilic and/or ephebophilic Catholic clergy were assaulting  
9 children in, among other locations, Fresno County, and, subsequently, Santa Clara  
10 County.

11 The San Jose Defendants also knew or should have known that the general risk  
12 of sexual assaults against children and, specifically, the risk posed by Fr. Flickinger and  
13 Defendants' other pedophilic and/or ephebophilic agents' propensities to commit, and  
14 history of committing, sexual abuse of children, could be eliminated, or at least  
15 minimized, if they took steps to educate, warn and train children in the San Jose  
16 Defendants' custody and control, as well as those children's parents, and the San Jose  
17 Defendants' employees, agents and volunteers, regarding the danger posed by  
18 pedophilic and ephebophilic clergy, how to recognize and avoid this danger, and how  
19 a child should defend herself or himself when assaulted by pedophilic and/or  
20 ephebophilic clergy. Based on their knowledge of the risk posed by Fr. Flickinger and  
21 Defendants' other pedophilic and/or ephebophilic agents, and the history of sexual  
22 assaults around Fresno County, and, subsequently, Santa Clara County since at least  
23 1972, the San Jose Defendants had a duty to take the aforementioned steps.

24 Notwithstanding the knowledge of the general risk of sexual assaults against  
25 children and, specifically, that Fr. Flickinger and Defendants' other pedophilic and/or  
26 ephebophilic agents had such propensities to commit, and had committed, sexual  
27 abuse of children, and notwithstanding that the San Jose Defendants knew it was not  
28 only reasonably foreseeable but likely that Fr. Flickinger and Defendants' other

1 pedophilic and/or ephebophilic agents would sexually assault children, the San Jose  
2 Defendants breached their duty to adequately teach, educate, secure, oversee, and  
3 maintain students, including Plaintiff, as well as all other children in the custody and  
4 control of, or in contact with, Catholic clergy, and breached their duty to educate, warn  
5 and train children in the San Jose Defendants' custody and control and/or who they  
6 knew would come into contact with Flickinger, as well as those children's parents and  
7 the San Jose Defendants' employees, agents and volunteers, regarding the danger to  
8 children posed by pedophilic and/or ephebophilic clergy, how to recognize and avoid  
9 this danger, and how a child should defend himself or herself when assaulted by  
10 pedophilic and/or ephebophilic clergy.

11         The San Jose Defendants knew or should have known that their failure to  
12 exercise reasonable care, as discussed above, would cause Plaintiff severe emotional  
13 distress and physical injury. Because of the foreseeability and likelihood of sexual  
14 assaults by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents  
15 against Plaintiff and other children, the San Jose Defendants breached their duty of  
16 care to Plaintiff and other children in their custody and control.

17         The failure of the San Jose Defendants to educate, warn and train children in the  
18 San Jose Defendants' custody and control, as well as those children's parents and the  
19 San Jose Defendants' employees, agents and volunteers, regarding the danger to  
20 children posed by pedophilic and/or ephebophilic clergy, how to recognize and avoid  
21 this danger, and how a child should defend himself or herself when assaulted by  
22 pedophilic and ephebophilic clergy, was the proximate cause of Plaintiff's injuries as  
23 alleged herein.

24 60. As a result of the above-described conduct, Plaintiff has suffered, and continues  
25 to suffer great pain of mind and body, shock, emotional distress, physical  
26 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
27 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
28 spiritually; was prevented and will continue to be prevented from performing Plaintiff's

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

6  
7 **NINTH CAUSE OF ACTION**

8 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

9 **(Against All Defendants)**

10 61. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

11 62. Defendants' conduct was extreme and outrageous and was intentional and/or  
12 wanton and reckless with a conscious disregard for the rights and safety of Plaintiff and  
13 other children. Defendants knew or should have known Fr. Flickinger and Defendants'  
14 other pedophilic and/or ephebophilic agents were spending time, and would continue  
15 to spend time in the future, in the company of and assaulting numerous children,  
16 including Plaintiff, around Fresno County, and, subsequently, Santa Clara County and  
17 other locations, including on school grounds, in the parishes, and in Fr. Flickinger's  
18 rectory rooms. Defendants also knew or should have known Fr. Flickinger and  
19 Defendants' other pedophilic and/or ephebophilic agents were high risks to all children  
20 as Defendants had received numerous complaints and other notice of prior acts of  
21 childhood sexual abuse by Fr. Flickinger and Defendants' other pedophilic and/or  
22 ephebophilic agents, and had sent Fr. Flickinger and/or Defendants' other pedophilic  
23 and/or ephebophilic agents for treatment for their pedophilia, prior to and/or after  
24 assigning them to work at Defendant Parish and/or Defendant School. Given their  
25 knowledge of numerous prior acts of abuse by Fr. Flickinger and Defendants' other  
26 pedophilic and/or ephebophilic agents, Defendants knew or should have known that  
27 every child exposed to Fr. Flickinger and Defendants' other pedophilic and/or  
28 ephebophilic agents, including Plaintiff, was substantially certain to be assaulted by Fr.

1 Flickinger and Defendants' other pedophilic and/or ephebophilic agents. Defendants  
2 knew or should have known, and had the opportunity to learn of, the intentional and  
3 malicious conduct of Fr. Flickinger and Defendants' other pedophilic and/or  
4 ephebophilic agents, and thereby ratified and joined in said conduct by failing to  
5 terminate, discharge, or at least discipline Fr. Flickinger and Defendants' other  
6 pedophilic and/or ephebophilic agents after learning of their propensities, and/or by  
7 failing to warn anyone of Fr. Flickinger's and Defendants' other pedophilic and/or  
8 ephebophilic agents propensities and/or by failing to prevent them from having contact  
9 with children. The conduct of Defendants in confirming, concealing and ratifying that  
10 conduct was done with knowledge that the emotional and physical distress of Plaintiff  
11 and other children exposed to these men would thereby increase, and was done with  
12 a wanton and reckless disregard of the consequences to Plaintiff and other children in  
13 their custody and control.

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

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

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**TENTH CAUSE OF ACTION**  
**NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**  
**(Against All Defendants)**

65. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

66. Defendants knew or should have known that their failure to exercise reasonable care in the selection, approval, employment, supervision and transfer to other dioceses or archdioceses of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents, and their failure to warn anyone of the propensities of these men, would cause severe emotional distress to Plaintiff and other children exposed to Flickinger. Because of the foreseeability of sexual assaults by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents against Plaintiff and other children, Defendants breached their duty of care in engaging in the conduct referred to in the preceding paragraphs. Defendants' conduct was wanton and reckless and/or evidenced a conscious disregard for the rights and safety of Plaintiff and other children.

67. The San Jose Defendants knew or should have known that their failure to exercise reasonable care in providing adequate supervision to Plaintiff and other children in their custody and control, despite the fact they knew or should have known of the threat to children posed by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents, would cause Plaintiff severe emotional distress. Defendants also knew or should have known that their failure to disclose information relating to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents as described herein would cause Plaintiff and other children exposed to Flickinger severe emotional distress and subject them to further assaults. Because of the foreseeability of sexual assaults by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents against Plaintiff and other children, the San Jose Defendants breached their duty to exercise reasonable care in failing to provide adequate supervision to Plaintiff and other children in their custody and control. Additionally, Defendants breached their duty to exercise reasonable care in failing to

1 disclose information to Plaintiff, his family, and the general public relating to sexual  
2 misconduct of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
3 agents.

4 68. Finally, Defendants knew or should have known that their creation and  
5 continuance of the Public Nuisance set forth in the preceding paragraphs would cause  
6 Plaintiff and other children severe emotional distress. Because of the foreseeability of  
7 sexual assaults by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
8 agents against Plaintiff and other children as a result of this conduct, Defendants  
9 breached their duty of care in creating and continuing the Public Nuisance referred to  
10 in the preceding paragraphs.

11 69. Plaintiff experienced and continues to experience severe emotional distress  
12 resulting in bodily harm.

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

23 In addition, when Plaintiff finally discovered the negligent misrepresentations of  
24 the San Jose Defendants, and continuing thereafter, Plaintiff experienced extreme and  
25 severe mental and emotional distress that Plaintiff had been the victim of the San Jose  
26 Defendants' negligent misrepresentations; that Plaintiff had not been able to help other  
27 minors being molested because of the negligent misrepresentations; and that Plaintiff  
28 had not been able because of the negligent misrepresentations and failure to disclose



1 to receive timely medical treatment needed to deal with the problems Plaintiff had  
2 suffered and continues to suffer as a result of the sexual abuse.

3  
4 **ELEVENTH CAUSE OF ACTION**

5 **FRAUD AND DECEIT**

6 **(Against The San Jose Defendants)**

7 71. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

8 72. Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents held  
9 themselves out to Plaintiff as Roman Catholic Priests, religious brothers, religious  
10 instructors, counselors, school administrators, school teachers, surrogate parents,  
11 spiritual mentors, emotional mentors, medical services providers and/or care givers,  
12 and/or other authority figures. Fr. Flickinger and Defendants' other pedophilic and/or  
13 ephebophilic agents represented to Plaintiff and Plaintiff's parents that they would  
14 counsel and guide Plaintiff with his educational, spiritual, and/or emotional needs.  
15 Additionally, Fr. Flickinger told Plaintiff and Plaintiff's parents that he would take Plaintiff  
16 out to lunch and counsel Plaintiff regarding what high school Plaintiff should attend. Fr.  
17 Flickinger also purported to counsel Plaintiff regarding his sexual development and/or  
18 to hear Plaintiff's confession regarding sexual matters.

19 73. These representations were made by Fr. Flickinger and Defendants' other  
20 pedophilic and/or ephebophilic agents with the intent and for the purpose of inducing  
21 Plaintiff and Plaintiff's parents to entrust the educational, spiritual, sexual, emotional  
22 and physical well being of Plaintiff with Fr. Flickinger and Defendants' other pedophilic  
23 and/or ephebophilic agents.

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

1 representations.

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

9 76. The San Jose Defendants are vicariously liable for the fraud and deceit of Fr.  
10 Flickinger and the San Jose Defendants' other agents.

11 77. 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  
13 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
14 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
15 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
16 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
17 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
18 to incur expenses for medical and psychological treatment, therapy, and counseling.  
19 As a proximate result of these injuries, Plaintiff has suffered general and special  
20 damages in an amount in excess of the jurisdictional minimum of this Court.

21 78. In addition, when Plaintiff finally discovered the fraud of the San Jose  
22 Defendants, and continuing thereafter, Plaintiff experienced recurrences of the above-  
23 described injuries. In addition, when Plaintiff finally discovered the fraud of the San  
24 Jose Defendants, and continuing thereafter, Plaintiff experienced extreme and severe  
25 mental and emotional distress that Plaintiff had been the victim of the San Jose  
26 Defendants' fraud; that Plaintiff had not been able to help other minors being molested  
27 because of the fraud; and that Plaintiff had not been able because of the fraud to  
28 receive timely medical treatment needed to deal with the problems Plaintiff had suffered

1 and continues to suffer as a result of the molestations.

2  
3 **TWELFTH CAUSE OF ACTION**

4 **PREMISES LIABILITY**

5 **(Against The San Jose Defendants)**

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

7 80. At all times herein mentioned, Defendant San Jose Bishop and/or Defendant  
8 Parish and/or Defendant School were in possession of the property where the Plaintiff  
9 was groomed and assaulted by Fr. Flickinger, and had the right to manage, use and  
10 control that property.

11 81. At all times herein mentioned, Defendant San Jose Bishop and/or Defendant  
12 Parish and/or Defendant School knew that Fr. Flickinger and Defendants' other  
13 pedophilic and/or ephebophilic agents had a history of committing sexual assaults  
14 against children, and that any child at, among other locations in Santa Clara County,  
15 Defendant Parish and Defendant School was at risk to be sexually assaulted by Fr.  
16 Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

17 82. The San Jose Defendants knew or should have known that their agents at  
18 Defendant Parish and Defendant School had a history of grooming of and/or sexual  
19 assaults against children committed by Fr. Flickinger and/or Defendants' other  
20 pedophilic and/or ephebophilic agents and that any child at, among other locations in  
21 Santa Clara County, Defendant Parish and Defendant School, was at risk to be  
22 sexually assaulted. It was foreseeable to the San Jose Defendants that Fr. Flickinger  
23 and Defendants' other pedophilic and/or ephebophilic agents would sexually assault  
24 children if they continued to allow Fr. Flickinger and/or Defendants' other pedophilic  
25 and/or ephebophilic agents to teach, supervise, instruct, care for, and have custody and  
26 control of and/or contact with children.

27 83. At all times herein mentioned, the San Jose Defendants knew or should have  
28 known Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents were

1 repeatedly committing sexual assaults against children.

2 84. It was foreseeable to the San Jose Defendants that the sexual assaults being  
3 committed by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
4 agents would continue if the San Jose Defendants continued to allow Fr. Flickinger and  
5 Defendants' other pedophilic and/or ephebophilic agents to teach, supervise, instruct,  
6 care for, conduct physical examinations of, and have custody of and/or contact with  
7 young children.

8 85. Because it was foreseeable that the sexual assaults being committed by Fr.  
9 Flickinger and Defendants' other pedophilic and/or ephebophilic agents would continue  
10 if the San Jose Defendants continued to allow them to teach, supervise, instruct, care  
11 for, conduct physical examinations of, and have custody of and/or contact with young  
12 children, the San Jose Defendants owed a duty of care to all children, including  
13 Plaintiff, exposed to Fr. Flickinger and/or Defendants' other pedophilic and/or  
14 ephebophilic agents. The San Jose Defendants also owed a heightened duty of care  
15 to all children, including Plaintiff, because of their young age.

16 86. By allowing Fr. Flickinger and/or Defendants' other pedophilic and/or  
17 ephebophilic agents to teach, supervise, instruct, care for, conduct physical  
18 examinations of, and have custody of and/or contact with young children, and by failing  
19 to warn children and their families of the threat posed by Fr. Flickinger and Defendants'  
20 other pedophilic and/or ephebophilic agents, the San Jose Defendants breached their  
21 duty of care to all children, including Plaintiff.

22 87. The San Jose Defendants negligently used and managed Defendant Parish and  
23 Defendant School, and created a dangerous condition and an unreasonable risk of  
24 harm to children by allowing Fr. Flickinger and Defendants' other pedophilic and/or  
25 ephebophilic agents to teach, supervise, instruct, care for, conduct physical  
26 examinations of, and have custody of and/or contact with young children at, among  
27 other locations, Defendant Parish and Defendant School.

28 88. As a result of the dangerous conditions created by the San Jose Defendants,

1 numerous children were sexually assaulted by Fr. Flickinger and Defendants' other  
2 pedophilic and/or ephhebophilic agents.

3 89. The dangerous conditions created by the San Jose Defendants were the  
4 proximate cause of Plaintiff's injuries and damages.

5 90. As a result of these dangerous conditions, Plaintiff has suffered, and continues  
6 to suffer great pain of mind and body, shock, emotional distress, physical  
7 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
8 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  
11 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
12 to incur expenses for medical and psychological treatment, therapy, and counseling.  
13 As a proximate result of these injuries, Plaintiff has suffered general and special  
14 damages.

15  
16 **THIRTEENTH CAUSE OF ACTION**

17 **CHILDHOOD SEXUAL ABUSE**

18 **(Against Defendant Father Don Flickinger)**

19 91. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

20 92. While Plaintiff was a minor and in the custody and/or under the control and  
21 supervision of Defendant Flickinger, Defendant Flickinger intentionally sexually  
22 molested and assaulted Plaintiff.

23 93. As a result of the above-described conduct, Plaintiff has suffered, and continues  
24 to suffer great pain of mind and body, shock, emotional distress, physical  
25 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
26 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
27 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
28 daily activities and obtaining the full enjoyment of life; has sustained and will continue

1 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
2 to incur expenses for medical and psychological treatment, therapy, and counseling.  
3 As a proximate result of these injuries, Plaintiff has suffered general and special  
4 damages in an amount in excess of the jurisdictional minimum of this Court.

5 94. In doing the acts complained of herein, Defendant Flickinger acted intentionally,  
6 maliciously and with conscious disregard for the rights of Plaintiff, thereby entitling  
7 Plaintiff to punitive damages in an amount to be established at trial.

8  
9 **FOURTEENTH CAUSE OF ACTION**  
10 **SEXUAL BATTERY (CIVIL CODE § 1708.5)**  
11 **(Against Defendant Flickinger)**

12 95. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth herein.

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

19 97. 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  
21 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
22 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
23 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
24 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
25 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
26 to incur expenses for medical and psychological treatment, therapy, and counseling.  
27 As a proximate result of these injuries, Plaintiff has suffered general and special  
28 damages in an amount in excess of the jurisdictional minimum of this Court.

1 98. In doing the acts complained of herein, Defendant Flickinger acted intentionally,  
2 maliciously and with conscious disregard for the rights of Plaintiff, thereby entitling  
3 Plaintiff to punitive damages in an amount to be established at trial. Defendant  
4 Flickinger is further liable to Plaintiff for punitive damages pursuant to Civil Code §  
5 1708.5(b).

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

10  
11 **JURY DEMAND**

12 Plaintiff demands a jury trial on all issues so triable.

13  
14 DATE: August 9, 2011 NYE, PEABODY, STIRLING, HALE & MILLER, LLP

15  
16 By: 

17 DAVID L. NYE  
18 TIMOTHY C. HALE