

ENDORSED
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SUPERIOR COURT
OF CALIFORNIA
COUNTY OF SONOMA

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13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SONOMA**

15 JOHN DOE 76,

16 Plaintiff,

17 v.

18 THE ROMAN CATHOLIC BISHOP OF
19 SANTA ROSA, and DOES 1 through 25,
20 inclusive,

21 Defendants.

Case No.: *SCV 248032*

COMPLAINT FOR DAMAGES

1. Fraud
2. Intentional Non-Disclosure
3. Fraudulent Concealment / Intentional Non-Disclosure
4. Negligent Misrepresentation

GENERAL ALLEGATIONS

BY FAX

1. Plaintiff is using a fictitious name in this Complaint under rights to privacy granted by the Constitution of the State of California due to the sensitive nature of this case. If, for any reason, Defendants cannot accurately determine the identity of the Plaintiff, their attorney can contact Plaintiff's attorney at the address on the face sheet of the Complaint, and the name of the Plaintiff will be provided.

2. Plaintiff JOHN DOE 76 is a natural person who was a resident of the City of Eureka, County of Humboldt, State of California, at all relevant times mentioned herein. Plaintiff was 9 years old when he was first molested by Father Patrick Joseph McCabe (hereinafter "Father McCabe") in or around 1984.

3. Defendant Roman Catholic Bishop of Santa Rosa (hereinafter "Diocese") is a religious institution organized under the laws of the State of California as a corporation sole with

1 its principle place of business in Santa Rosa, California. Defendant Diocese is responsible for the
2 funding, staffing and direction of the parishes, parochial schools, fraternal organizations and other
3 facilities and institutions. It comprises the counties of Del Norte, Humboldt, Lake, Mendocino,
4 Napa and Sonoma.

5 4. Bishop Mark Joseph Hurley became the Bishop of the Santa Rosa Diocese in 1969.
6 Bishop Hurley was the Bishop of the Santa Rosa Diocese at all times Father McCabe was an
7 employee of the Diocese.

8 5. Father McCabe was ordained as a Roman Catholic priest. Father McCabe became
9 an assistant pastor at St. Bernard's Church in Eureka, California in or around 1983. Father
10 McCabe served the parishioners of St. Bernard's Church until in or about 1985 when he was
11 transferred to a St. Elizabeth's Church in Guerneville, California after Defendant received
12 additional, credible reports of criminal child sexual abuse by Father McCabe in Eureka, California.

13 6. Plaintiff is informed and believes and based thereon alleges that at all times
14 material hereto each Defendant was the agent, servant, employee and/or representative of each
15 remaining Defendant, and was at all times acting within the course and scope of said agency,
16 service, employment and/or representation, and did the acts herein alleged with the permission and
17 consent of each other Defendant. Plaintiff is informed and believes and based thereon alleges that
18 at all times material hereto Defendant Diocese and DOES 1 through 25, inclusive, and each of
19 them, operated and controlled religious and educational facilities in Sonoma county, and other
20 counties in California, and through such facilities, provided religious and educational instruction
21 to students, parishioners and others.

22 7. The true names and capacities, whether individual, corporate, associate or
23 otherwise, of Defendants DOES 1 through 25 are unknown to Plaintiff, who therefore sues said
24 Defendants by such fictitious names. When the true names and capacities of said Defendants have
25 been ascertained, Plaintiff will seek leave of court to amend this Complaint to allege such true
26 names and capacities. Plaintiff is informed and believes and based thereon alleges that each of the
27 Defendants designated as a DOE herein is liable in some manner for the acts, occurrences and
28 omissions hereinafter alleged.

1 8. While religious belief is absolutely protected, conduct is not protected and the
2 actions hereinbelow alleged were illegal secular motivated conduct that is regulated by the law.

3 9. In 1962, the Vatican in Rome issued a Papal Instruction binding upon all Bishops
4 throughout the world including the Bishop of Fresno. The instruction was binding upon the
5 Bishop of Fresno until 2001. The instruction directed that allegations and reports of sexual abuse
6 of children by priests were required to be kept secret and not disclosed either to civil authorities
7 such as law enforcement, to co-employees or supervisors of parish priests, or to parishioners
8 generally.

9 10. Canon law requires Bishops to keep subsecreto files also known as confidential
10 files. These files are not to be made public.

11 11. Because of problems of sexual misconduct of Catholic clergy, the Catholic Church
12 and other organizations sponsored treatment centers for priests that had been involved in sexual
13 misconduct. One of the treatment centers that existed prior to 1982 was in Albuquerque, New
14 Mexico, and sponsored by the servants of the Paracletes. Father McCabe attended this facility
15 prior to his transfer to St. Bernard's in Eureka and was a known pedophile. Another treatment
16 center for priests who engaged in sexual misconduct was St. Luke's in Suitland, Maryland.

17 12. Sexual abuse of clerics by Catholic clergy has been a reality in the Catholic Church
18 for centuries but has remained covered by deep secrecy. This secrecy is rooted in the official
19 policies of the Catholic Church which are applicable to all dioceses and in fact are part of the
20 practices of each diocese, including the Diocese of Santa Rosa. Sexual abuse of minors by
21 Catholic clergy and religious leaders became publicly known in the mid 1980's as a result of
22 media coverage of a case in Lafayette, Louisiana. Since that time the media has continued to
23 expose cases of clergy sexual abuse throughout the United States. In spite of these revelations as
24 well as the many criminal and civil litigations the Church has been involved in as a result of clergy
25 sexual abuse of minors, the bishops and other Church leaders continued to pursue a policy of
26 secrecy.

27 13. All of the procedures required in the so-called "Dallas Charter" have been
28 previously mandated in the Code of Canon Law and in the 1922 and 1962 documents but were

1 consistently ignored by Catholic bishops. In place of the required processes, which would have
2 kept a written record of cases of clergy sexual abuse, the bishops applied a policy of clandestine
3 transfer of accused priests from one local or diocesan assignment to another or from one diocese to
4 another. The receiving parishioners and often the receiving pastors were not informed of any
5 accusations of sexual abuse of minors.

6 14. Refusal to disclose sexually abusing clerics to parishioners and even fellow clerics
7 has been one way utilized by Defendant to maintain secrecy. Another has been to use various
8 forms of persuasion on victims or their families to convince them to remain silent about incidents
9 of abuse. These forms of persuasion have included methods that have ranged from sympathetic
10 attempts to gain silence to direct intimidation to various kinds of threats. In so doing the clergy
11 involved, from bishops to priests, have relied on their power to overwhelm victims and their
12 families.

13 15. Plaintiff was raised in devoutly religious family, was baptized, confirmed, served
14 as an altar server and regularly celebrated weekly mass and received the sacraments through his
15 Church. Plaintiff was educated and taught the theology and tenets of The Roman Catholic Church
16 on matters of faith, morals and religious doctrine. Plaintiff therefore developed great admiration,
17 trust, reverence and respect for, and obedience to, Roman Catholic clergy, who occupied positions
18 of great influence and persuasion as holy men and authority figures. Plaintiff was encouraged to
19 trust, respect and obey Father McCabe.

20 16. The Archdiocese of Dublin sent McCabe to the United States in 1982 after
21 receiving complaints of abuse from young boys and concerns about his sexual impulses, for which
22 he was given drug therapies including Depo-Provera. McCabe was first sent to a program for
23 sexual abusers in New Mexico and diagnosed as a pedophile.

24 17. In or around 1983, the Archbishop of Dublin spoke with Bishop Mark Hurley of
25 Santa Rosa to allow McCabe to run St. Bernard's Catholic Church in Eureka. Bishop Hurley
26 agreed to allow McCabe to serve as assistant pastor at St. Bernard's Church. Bishop Hurley
27 transferred McCabe from St. Bernard's Church to St. Elizabeth's Church in Guerneville in 1985
28 after receiving a credible report of criminal child sexual abuse.

1 18. JOHN DOE 76 first met and came to know Father McCabe as his parish priest and
2 counselor while attending St. Bernard's school and church in Eureka, California.

3 19. In 1984, Father McCabe sexually molested Plaintiff in St. Bernard's Church in
4 Eureka, California, after Father McCabe removed Plaintiff from his third grade class at St.
5 Bernard's school. Sexual molestations continued for approximately six to nine months.

6 20. At no time did Defendant Diocese ever send an official, a member of the clergy, an
7 investigator or any employee or independent contractor to St. Bernard's Church in Eureka to
8 advise the parishioners either verbally or through a church bulletin that there were credible
9 allegations against Father McCabe and to request that anyone who saw, suspected or suffered
10 sexual abuse to come forward and file a report with the police department. Rather, Defendant
11 Diocese remained silent.

12 21. Upon information and belief, Plaintiff now believes and alleges that Defendant
13 Diocese allowed Father McCabe to transfer to St. Elizabeth's Church in Guerneville in 1984, and
14 never disclosed to parishioners of St. Bernard's Church that Defendant Diocese knew that Father
15 McCabe was a pedophile and knew Father McCabe had molested children at St. Bernard's Church
16 in Eureka.

17 22. Accordingly, pursuant to California Code of Civil Procedure section 338(d),
18 Plaintiff's causes of action did not accrue until Plaintiff read in the Eureka Times-Standard on or
19 about August 14, 2010, that Defendant Diocese had placed Father McCabe, a known pedophile,
20 into his parish, without disclosing to Plaintiff or his parents that he, as a nine year old student at
21 St. Bernard's school, was in fact at risk.

22 23. Defendant is estopped from asserting a statute of limitations defense. Defendant's
23 knowing false representations as set forth below prevent it from being able to use any statute of
24 limitations to protect itself. Defendant was aware of the true facts when misrepresentations were
25 made. Defendant intended that its representations would be acted upon by Plaintiff. Plaintiff was
26 never aware of the true facts until within one year of the filing of this action. Plaintiff relied on
27 Defendant's conduct to his detriment. Had Plaintiff and his parents known what Defendants
28 knew—that Father McCabe was known by Defendant to be a pedophile, prior to his assignment to

1 St. Bernard's in 1983, Plaintiff would not have been exposed to McCabe.

2 24. Defendant has its primary place of business in Sonoma County; therefore, venue is
3 properly placed in Sonoma County.

4 **FIRST CAUSE OF ACTION**
5 **(Fraud)**

6 25. Plaintiff incorporates herein by reference each and every General Allegation as if
7 fully set forth herein and with the same force and effect.

8 26. A priest was and is directly answerable to the Diocese as his superior. Defendant
9 wanted its pastors to be well respected by the parishioners in their parish. Defendant also wanted
10 the parishioners to have belief and trust in their pastors.

11 27. Defendant wanted parishioners to have a belief that their priest would never do
12 anything to harm them and also a belief that the priest would always act in their best interest.

13 28. Defendant's fundamental responsibility to the lay people and the priests is to
14 safeguard and nurture their spiritual and moral life. This responsibility requires that a bond of
15 complete trust exist between the Bishop and each person entrusted to him, meaning those who live
16 in his diocese and those who may be there temporarily.

17 29. The trust relationship that exists between a Bishop and the people of his diocese is
18 deeper and more inclusive than the trust relationship that exists between any secular superior and
19 his other subject. The institutional Church teaches the lay parishioner that he or she must trust the
20 Bishop to administer the laws of the Church in a fair and impartial manner (canon 221).

21 30. Defendant's act of placing Father McCabe at St. Bernard's where he had
22 unsupervised access to children affirmatively represented to the minor children and their families
23 that the Roman Catholic Bishop of Santa Rosa did not know that Father McCabe had a history of
24 molesting children and that the Roman Catholic Bishop did not know that Father McCabe was a
25 danger to children. Such acts constitute representations of fact.

26 31. Plaintiff justifiably relied upon Defendant's misrepresentation which caused him to
27 have contact with Father McCabe.

28 32. Defendant Diocese knew that the misrepresentations were false or at least were

1 reckless and without care of whether these representations were true or false.

2 33. Defendant made the misrepresentations with the intent to deceive Plaintiff and his
3 parents and to induce him to act on the misrepresentations.

4 34. At no time did Defendant Diocese ever send an official, a member of the clergy, an
5 investigator or any employee or independent contractor to St. Bernard's Church to advise the
6 parishioners either verbally or through a church bulletin that there were credible allegations
7 against Father McCabe and to request that anyone who saw, suspected or suffered sexual abuse to
8 come forward and file a report with the police department. Rather, Defendant Diocese remained
9 silent despite its knowledge that McCabe had sexually molested a Catholic child at St. Bernard's.

10 35. As a direct result of Defendant's fraud, Plaintiff was caused harm as more fully set
11 forth below.

12 **SECOND CAUSE OF ACTION**
13 **(Fraud - Intentional Non-Disclosure)**

14 36. Plaintiff incorporates herein by reference each and every allegation in the first
15 cause of action as if fully set forth herein and with the same force and effect.

16 37. Defendant knew that Father McCabe had a history of sexually molesting children
17 before Father McCabe sexually molested Plaintiff. The Diocese failed to disclose the fact that
18 Father McCabe had a history of repeated criminal sexual abuse of children. Defendant Diocese, in
19 light of its knowledge of Father McCabe's prior criminal sexual molestation of children, intended
20 to deceive children and their families at St. Bernard's Church and school.

21 38. Whether or not Father McCabe had a history of sexual abuse was a material fact to
22 Plaintiff.

23 39. Plaintiff and his parents relied on this non-disclosure.

24 40. Defendant intentionally did not disclose this fact to the then minor Plaintiff or his
25 parents in order to induce them to act on the misrepresentations to his detriment.

26 41. Plaintiff relied upon this intentional non-disclosure, which caused him to be
27 sexually molested by Father McCabe and suffer the damages as set forth below.

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1 **THIRD CAUSE OF ACTION**
2 **(Fraudulent Concealment / Intentional Non-Disclosure)**

3 42. Plaintiff incorporates herein by reference each and every allegation in the second
4 cause of action as if fully set forth herein and with the same force and effect.

5 43. Plaintiff reposed great trust and confidence in Defendant. Defendant accepted
6 Plaintiff's trust and confidence. As a result of Defendant's relationship to Plaintiff and his family,
7 Defendant owed a fiduciary duty to Plaintiff that was breached by failing to disclose and actively
8 concealing that Father McCabe was a known danger to children.

9 44. Whether or not Father McCabe was a known criminal sex offender and would have
10 access to children by Defendant were material facts to Plaintiff.

11 45. Defendant concealed or intentionally failed to disclose information relating to
12 Defendant's knowledge of Father McCabe's criminal history.

13 46. Defendant knew it concealed or failed to disclose information relating to Father
14 McCabe's criminal history.

15 47. Plaintiff justifiably relied upon Defendant for information relating to Father
16 McCabe's fitness to serve as a priest at St. Bernard's with access to children.

17 48. As a direct result of Defendant's fraudulent concealment, Plaintiff was caused harm
18 as more fully set forth below.

19 **FOURTH CAUSE OF ACTION**
20 **(Negligent Misrepresentation)**

21 49. Plaintiff incorporates herein by reference each and every General Allegation as if
22 fully set forth herein and with the same force and effect.

23 50. Defendant, through its agents, represented to Plaintiff and his family that Father
24 McCabe did not have a history of molesting children and that Father McCabe was not a danger to
25 children.

26 51. Father McCabe did have a history of sexually molesting children and was a danger
27 to children.

28 52. Defendant owed a duty of care to Plaintiff because it knew Father McCabe would

1 have access to children including Plaintiff. Defendant should have known that Father McCabe
2 was a danger to children, and should have known Father McCabe had molested children before he
3 molested Plaintiff, and should have known that parents and children would place the utmost trust
4 in Father McCabe.

5 53. Defendant, through its agents, failed to use ordinary care in making the
6 representations or in ascertaining the facts related to Father McCabe. Defendant reasonably
7 should have foreseen that its representations would subject Plaintiff to an unreasonable risk of
8 harm.

9 54. Defendant failed to use ordinary care to determine Father McCabe's
10 significant/lengthy history of molesting children and whether he was safe for work with children
11 before it made its representation about Father McCabe. Defendant's failures, include, but are not
12 limited to: failure to ask Father McCabe whether he would be sexually molesting children, failure
13 to ask Father McCabe's co-workers whether he was molesting children or whether they had any
14 concerns about Father McCabe and children, failure to investigate Father McCabe's interest in
15 children, failure to have an adequate system to determine whether Father McCabe molested
16 children and whether he was safe, failure to train its employees properly to identify signs of child
17 molestation by fellow employees, and failure to investigate warning signs about Father McCabe
18 when they did arise.

19 55. Plaintiff believed and justifiably relied upon Defendant's representations which
20 caused him to be sexually molested by Father McCabe and suffer damages as set forth below.

21 DAMAGES

22 56. As a direct, legal and proximate result of each and all of the Causes of Action
23 hereinabove alleged, Plaintiff has been damaged as herein below set forth.

24 57. Plaintiff has suffered psychological and emotional injury and harm, including not
25 only the immediate distress caused by Defendant and its conduct, but also long-term psychological
26 injuries which were to a large extent only latent at the time of the wrongful conduct, and which
27 have developed and occurred, and will in the future continue to develop and occur in Plaintiff, all
28 to Plaintiff's general damages in a sum to be proven. Plaintiff has further suffered an exacerbation

1 of any emotional difficulties which were pre-existing the harmful treatment Plaintiff received from
2 Defendant.

3 58. Plaintiff has suffered physical, mental and emotional health problems as a result of
4 which he has had to employ, and will in the future continue to have to employ, medical and mental
5 health professionals for diagnosis and treatment and have incurred and will in the future continue
6 to incur expenses therefore, in a sum as yet unascertained. Plaintiff will ask leave of Court to
7 amend this Complaint to state the exact amount of expenses when they are ascertained.

8 59. Plaintiff has suffered and will in the future continue to suffer a loss of earnings and
9 of earning capacity, in a sum as yet unascertained. Plaintiff will ask leave of court to amend this
10 Complaint to state the exact amount of such losses when the sums are ascertained.

11 **WHEREFORE**, Plaintiff pray for judgment as follows:

12 1. For damages for past and future medical, psychotherapy, and related expenses
13 according to proof at the time of trial;

14 2. For general damages for physical and mental pain and suffering and emotional
15 distress in a sum to be proven at the time of trial;

16 3. For damages for past and future lost wages and loss of earning capacity according
17 to proof at the time of trial;

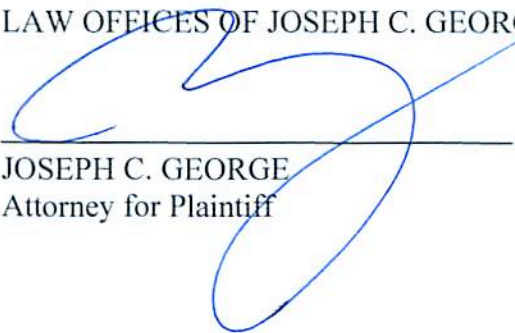
18 4. For prejudgment interest pursuant to statute;

19 5. For costs of suit herein; and

20 6. For such other and further relief as the Court deems proper.

21 Dated: August 19, 2010

LAW OFFICES OF JOSEPH C. GEORGE, PH.D.

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24 _____
25 JOSEPH C. GEORGE
26 Attorney for Plaintiff
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