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ENDORSED  
FILED  
ALAMEDA COUNTY

NOV - 9 2010

CLERK OF THE SUPERIOR COURT  
By Barbara LaMotte  
Deputy

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA

13 FOR THE COUNTY OF ALAMEDA

14 JANE DOE 40,

15 Plaintiff,

16 v.

17 THE ROMAN CATHOLIC BISHOP OF  
18 OAKLAND, and ROES 1 through 25, inclusive,

19 Defendants.

Case No.: *KG* 10545741

COMPLAINT FOR DAMAGES

1. Negligence Per Se
2. Fraud
3. Intentional Non-Disclosure
4. Fraudulent Concealment / Intentional Non-Disclosure
5. Vicarious Liability

BY FAX

GENERAL ALLEGATIONS

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 JANE DOE 40 is a natural person who was a resident of the State of California, at all relevant times mentioned herein. Plaintiff was 12 years old when she was first molested by Monsignor Vincent Ignacio Breen (hereinafter "Monsignor Breen") in or around 1980-1981.

3. Defendant Roman Catholic Bishop of Oakland (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 Oakland, 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 Alameda and Contra Costa.

4 4. Bishop Begin became the Bishop of Oakland Diocese in 1962. Bishop Cummins  
5 became the Bishop of the Oakland Diocese in 1977. Bishops Begin and Cummins were the  
6 Bishops of the Oakland Diocese at the time Monsignor Breen was an employee of the Diocese.

7 5. Plaintiff is informed and believes and based thereon alleges that at all times  
8 material hereto each Defendant was the agent, servant, employee and/or representative of each  
9 remaining Defendant, and was at all times acting within the course and scope of said agency,  
10 service, employment and/or representation, and did the acts herein alleged with the permission and  
11 consent of each other Defendant. Plaintiff is informed and believes and based thereon alleges that  
12 at all times material hereto Defendant Diocese and ROES 1 through 25, inclusive, and each of  
13 them, operated and controlled religious and educational facilities in Alameda county, and other  
14 counties in California, and through such facilities, provided religious and educational instruction  
15 to students, parishioners and others.

16 6. The true names and capacities, whether individual, corporate, associate or  
17 otherwise, of Defendants ROES 1 through 25 are unknown to Plaintiff, who therefore sues said  
18 Defendants by such fictitious names. When the true names and capacities of said Defendants have  
19 been ascertained, Plaintiff will seek leave of court to amend this Complaint to allege such true  
20 names and capacities. Plaintiff is informed and believes and based thereon alleges that each of the  
21 Defendants designated as a ROE herein is liable in some manner for the acts, occurrences and  
22 omissions hereinafter alleged.

23 7. While religious belief is absolutely protected, conduct is not protected and the  
24 actions hereinbelow alleged were illegal secular motivated conduct that is regulated by the law.

25 8. In 1962, the Vatican in Rome issued a Papal Instruction binding upon all Bishops  
26 throughout the world including the Bishop of Oakland. The instruction was binding upon the  
27 Bishop of Oakland until 2001. The instruction directed that allegations and reports of sexual  
28 abuse of children by priests were required to be kept secret and not disclosed either to civil

1 authorities such as law enforcement, to co-employees or supervisors of parish priests, or to  
2 parishioners generally.

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

5 10. Because of problems of sexual misconduct of Catholic clergy, the Catholic Church  
6 and other organizations sponsored treatment centers for priests that had been involved in sexual  
7 misconduct. One of the treatment centers that existed prior to 1982 was in Albuquerque, New  
8 Mexico, and sponsored by the servants of the Paracletes. Another treatment center for priests who  
9 engaged in sexual misconduct was St. Luke's in Suitland, Maryland.

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

19 12. All of the procedures required in the so-called "Dallas Charter" have been  
20 previously mandated in the Code of Canon Law and in the 1922 and 1962 documents but were  
21 consistently ignored by Catholic bishops. In place of the required processes, which would have  
22 kept a written record of cases of clergy sexual abuse, the bishops applied a policy of clandestine  
23 transfer of accused priests from one local or diocesan assignment to another or from one diocese to  
24 another. The receiving parishioners and often the receiving pastors were not informed of any  
25 accusations of sexual abuse of minors.

26 13. Refusal to disclose sexually abusing clerics to parishioners and even fellow clerics  
27 has been one way utilized by Defendant to maintain secrecy. Another has been to use various  
28 forms of persuasion on victims or their families to convince them to remain silent about incidents

1 of abuse. These forms of persuasion have included methods that have ranged from sympathetic  
2 attempts to gain silence to direct intimidation to various kinds of threats. In doing so, the clergy  
3 involved, from bishops to priests, have relied on their power to overwhelm victims and their  
4 families.

5 14. Plaintiff was raised in devoutly religious family, was baptized, confirmed, served  
6 as an altar server and regularly celebrated weekly mass and received the sacraments through her  
7 Church. Plaintiff was educated and taught the theology and tenets of The Roman Catholic Church  
8 on matters of faith, morals and religious doctrine. Plaintiff therefore developed great admiration,  
9 trust, reverence and respect for, and obedience to, Roman Catholic clergy, who occupied positions  
10 of great influence and persuasion as holy men and authority figures. Plaintiff was encouraged to  
11 trust, respect and obey Monsignor Breen.

12 15. JANE DOE 40 first met and came to know Monsignor Breen as her parish priest  
13 while attending Holy Spirit church and school in Fremont, California.

14 16. A major source of funds for Defendant is monies received from its parishioners in  
15 the form of tithing. Another major source of funding for Defendant and its agents is in the form of  
16 tuition for attendance at its Catholic schools. Defendant benefitted from Plaintiff and her parents  
17 through tithing and tuition.

18 17. In 1980-1981, Monsignor Breen sexually molested Plaintiff when she was working  
19 in the rectory.

20 18. At no time did Defendant Diocese ever send an official, a member of the clergy, an  
21 investigator or any employee or independent contractor to Holy Spirit Church in Fremont to  
22 advise the parishioners either verbally or through a church bulletin that there were credible  
23 allegations against Monsignor Breen and to request that anyone who saw, suspected or suffered  
24 sexual abuse to come forward and file a report with the police department. Rather, Defendant  
25 Diocese remained silent.

26 19. Pursuant to California Code of Civil Procedure section 338(d), Plaintiff's causes of  
27 action did not accrue until 2010, that Defendant Diocese allowed Monsignor Breen, a known  
28 pedophile, to remain in her parish, without disclosing to Plaintiff or her parents that she, as a 12

1 year old student at Holy Spirit Church, was in fact at risk. It was also within the last year that  
2 Plaintiff discovered that Defendant's teachers failed to file reports required by the Child Abuse  
3 Reporting Act despite knowledge of Father Breen's criminal child sexual abuse which would have  
4 prevented the abuse of Plaintiff.

5 20. Defendant is estopped from asserting a statute of limitations defense. Defendant's  
6 knowing false representations as set forth below prevent it from being able to use any statute of  
7 limitations to protect itself. Defendant was aware of the true facts when misrepresentations were  
8 made. Defendant intended that its representations would be acted upon by Plaintiff. Plaintiff was  
9 never aware of the true facts until within one year of the filing of this action. Plaintiff relied on  
10 Defendant's conduct to her detriment. Had Plaintiff and her parents known what Defendants  
11 knew—that Monsignor Breen was known by Defendant to be a pedophile, Plaintiff would not  
12 have been exposed to Breen.

13 21. Defendant is also estopped from asserting a statute of limitations defense, because  
14 starting in or around 1975, Defendant Diocese engaged in a pattern of conduct designed to  
15 minimize the liabilities of the Defendant because of Breen's conduct. Defendant knew Monsignor  
16 Breen had an extensive history of sexually abusing Catholic minors while he was serving as a  
17 priest in Holy Spirit in Fremont. Notwithstanding this knowledge, Defendant engaged in conduct  
18 which precludes it asserting a statute of limitations defense which includes aiding and abetting  
19 Breen's criminal conduct in continuing to place him in work around children despite knowledge of  
20 his criminal propensities. Defendant is further estopped from asserting a statute of limitations  
21 defense because, as with other Roman Catholic institutions, it has systematically for many years  
22 thwarted investigations of pedophile priests, while simultaneously attempting to pacify their  
23 victims and families through use of church loyalty. This has routinely included steering victims of  
24 abuse and their families to counselors loyal to the church, while at the same time failing to inform  
25 those victims and their families that they have legal rights and that there are statutes of limitations  
26 that could preclude later bringing an action. When such victims unknowingly wait until their  
27 limitations have expired, Defendant and other Roman Catholic entities have then argued for  
28 dismissal of the victim's case because the statutes of limitations have expired.

1           22. Defendant has its primary place of business in Alameda County; therefore, venue is  
2 properly placed in Alameda County.

3   **FIRST CAUSE OF ACTION**  
4   **(Negligence Per Se)**

5           23. Plaintiff realleges and incorporates by reference herein, all allegations of the  
6 General Allegations as though said allegations were fully set forth herein, and with the same force  
7 and effect.

8           24. In 1973, the Legislature of the state of California, introduced Senate Bill 1506  
9 which was an act to amend then section 1116.5 of the Penal Code, relating to minors, added that a  
10 teacher of any public or private school was a mandated reporter of cases of suspected sexual  
11 molestation of minors. Teachers have been mandated reporters of suspected physical and mental  
12 abuse or sexual molestation of minors ever since, and were mandated reporters at all relevant  
13 times mentioned in this complaint. Principals were also enumerated as mandated reporters of  
14 child sexual abuse at all relevant times mentioned in this complaint.

15           25. In or around 1975, teachers who were employed by Defendant Diocese became  
16 aware of complaints of child sexual abuse against Monsignor Breen. Said Diocesan employees  
17 failed to discharge their duties pursuant to the Child Abuse Reporting Act to file a report with  
18 Child Protective Services. Rather, teachers reported their reasonable suspicions and belief of  
19 Monsignor Breen's criminal conduct to Defendant.

20           26. By engaging in the aforementioned negligent and unprofessional acts, Defendant  
21 violated then existing sections of the Penal Code and Welfare and Institutions Code which govern  
22 the reports of reasonable suspicion of child abuse to law enforcement authorities. Further, said  
23 violations caused Plaintiff harm as more fully set forth below. Moreover, Plaintiff was within the  
24 class of persons specifically designed to be protected by the Child Abuse Reporting Act and her  
25 injuries resulted from an occurrence of the nature which the statute was designed to prevent.

26           27. As a result of the above acts, Plaintiff has been injured as more fully set forth  
27 below.

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**SECOND CAUSE OF ACTION**

**(Fraud)**

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2  
3 28. Plaintiff incorporates herein by reference each and every General Allegation as if  
4 fully set forth herein and with the same force and effect.

5 29. A priest was and is directly answerable to the Diocese as his superior. Defendant  
6 wanted its pastors to be well respected by the parishioners in their parish. Defendant also wanted  
7 the parishioners to have belief and trust in their pastors.

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

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

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

18 33. Defendant's act of placing Monsignor Breen at Holy Spirit where he had  
19 unsupervised access to children affirmatively represented to the minor children and their families  
20 that the Roman Catholic Bishop of Oakland did not know that Monsignor Breen had a history of  
21 molesting children and that the Roman Catholic Bishop did not know that Monsignor Breen was a  
22 danger to children. Such acts constitute representations of fact.

23 34. Plaintiff justifiably relied upon Defendant's misrepresentation which caused her to  
24 have contact with Monsignor Breen.

25 35. Defendant Diocese knew that the misrepresentations were false or at least were  
26 reckless and without care of whether these representations were true or false.

27 36. Defendant made the misrepresentations with the intent to deceive Plaintiff and her  
28 parents and to induce her to act on the misrepresentations.

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

8 38. As a direct result of Defendant's fraud, Plaintiff was caused harm as more fully set  
9 forth below.

10 **THIRD CAUSE OF ACTION**  
11 **(Fraud - Intentional Non-Disclosure)**

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

14 40. Defendant knew that Monsignor Breen had a history of sexually molesting children  
15 before Monsignor Breen sexually molested Plaintiff. The Diocese failed to disclose the fact that  
16 Monsignor Breen had a history of repeated criminal sexual abuse of children. Defendant Diocese,  
17 in light of its knowledge of Monsignor Breen's prior criminal sexual molestation of children,  
18 intended to deceive children and their families at Holy Spirit church and school.

19 41. Whether or not Monsignor Breen had a history of sexual abuse was a material fact  
20 to Plaintiff.

21 42. Plaintiff and her parents relied on this non-disclosure.

22 43. Defendant intentionally did not disclose this fact to the then minor Plaintiff or her  
23 parents in order to induce them to act on the misrepresentations to her detriment.

24 44. Plaintiff relied upon this intentional non-disclosure, which caused her to be  
25 sexually molested by Monsignor Breen and suffer the damages as set forth below.

26 **FOURTH CAUSE OF ACTION**  
27 **(Fraudulent Concealment / Intentional Non-Disclosure)**

28 45. Plaintiff incorporates herein by reference each and every allegation in the third



1 cause of action as if fully set forth herein and with the same force and effect.

2 46. Plaintiff reposed great trust and confidence in Defendant. Defendant accepted  
3 Plaintiff's trust and confidence. As a result of Defendant's relationship to Plaintiff and her family,  
4 Defendant owed a fiduciary duty to Plaintiff that was breached by failing to disclose and actively  
5 concealing that Monsignor Breen was a known danger to children.

6 47. Whether or not Monsignor Breen was a known criminal sex offender and would  
7 have access to children by Defendant were material facts to Plaintiff.

8 48. Defendant concealed or intentionally failed to disclose information relating to  
9 Defendant's knowledge of Monsignor Breen's criminal history.

10 49. Defendant knew it concealed or failed to disclose information relating to  
11 Monsignor Breen's criminal history.

12 50. Plaintiff justifiably relied upon Defendant for information relating to Monsignor  
13 Breen's fitness to serve as a priest at Holy Spirit with access to children.

14 51. As a direct result of Defendant's fraudulent concealment, Plaintiff was caused harm  
15 as more fully set forth below.

16 **FIFTH CAUSE OF ACTION**  
17 **(Vicarious Liability)**

18 52. Plaintiff incorporates herein by reference all allegations contained in the General  
19 Allegations as if fully set forth herein and with the same force and effect.

20 53. Defendant is vicariously liable for the intentional and/or negligent torts of the priest  
21 because (1) the Defendant authorized the wrongful conduct, (2) the Defendant ratified the  
22 wrongful conduct, and/or (3) public policy dictates that the Defendant should be held responsible  
23 for the wrongful conduct under the theory commonly referred to as Respondeat Superior.

24 54. Defendant is vicariously liable for the intentional and/or negligent torts of  
25 Monsignor Breen because he was acting within the scope of his misconduct, where such  
26 misconduct was foreseeable.

27 55. Defendant is vicariously liable because after knowledge or opportunity to learn of  
28 Monsignor Breen's misconduct, Defendant continued Monsignor Breen in service for Defendant.

1 Defendant is also vicariously liable because Defendant authorized Monsignor Breen to engage in  
2 the tortuous conduct.

3 56. The risk of abuse of a priest's authority, trust, reverence, respect and access to  
4 vulnerable families and young children have all been long known to the Defendant. It has been  
5 long known to the Defendant that priests with such authority, trust, reverence, respect and access  
6 to vulnerable families and young children create a risk of misusing their position to sexually  
7 molest children. Defendant has enacted policies designed to prevent this type of misconduct as  
8 part of their recognition that parties with access to young, vulnerable children create a special risk  
9 of sexual abuse to those children.

10 57. For the reasons set forth above, the Defendant could have and should have  
11 reasonably foreseen that Monsignor Breen's tortuous conduct might occur in conjunction with his  
12 assigned duties.

13 58. Since they could have foreseen, should have foreseen, and did foresee the  
14 possibility of this tortuous conduct occurring as an outgrowth of Monsignor Breen's duties,  
15 Defendant is vicariously liable for the tortuous conduct.

16 59. As a direct result of Defendant's conduct, Plaintiff was caused harm as more fully  
17 set forth below.

### 18 DAMAGES

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

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

28 62. Plaintiff has suffered physical, mental and emotional health problems as a result of

1 which she has had to employ, and will in the future continue to have to employ, medical and  
2 mental health professionals for diagnosis and treatment and have incurred and will in the future  
3 continue to incur expenses therefore, in a sum as yet unascertained. Plaintiff will ask leave of  
4 Court to amend this Complaint to state the exact amount of expenses when they are ascertained.

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

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

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

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

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

15 4. For prejudgment interest pursuant to statute;

16 5. For costs of suit herein; and

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

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19 Dated: October 25, 2010

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

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JOSEPH C. GEORGE  
Attorney for Plaintiff

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