

STATE OF INDIANA )  
 ) SS: IN THE MARION SUPERIOR COURT  
COUNTY OF MARION ) CAUSE NO.: \_\_\_\_\_

JOHN DOE 2, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 THE ROMAN CATHOLIC DIOCESE )  
 OF LAFAYETTE-IN-INDIANA, INC., OUR )  
 LADY OF MT. CARMEL, FR. JAMES J. )  
 GREAR, and DOES 1-100, inclusive, )  
 )  
 Defendants. )

**COMPLAINT**

Comes now the Plaintiff and based upon information and belief available to Plaintiff at the time of the filing of this Complaint, Plaintiff makes the following allegations:

**PARTIES**

1. Plaintiff John Doe 2 is an adult male. Plaintiff was a minor at the time of the sexual abuse alleged herein. The name used by Plaintiff in this Complaint is not the real name of Plaintiff, but is a fictitious name used to protect the privacy of Plaintiff, a victim of childhood sexual abuse.

2. The Roman Catholic Diocese of Lafayette-In-Indiana, Inc. (hereinafter "Defendant Diocese") is a domestic nonprofit corporation authorized to conduct business and conducting business in the State of Indiana, with its principal place of business located at 610 Lingle Avenue, Lafayette, IN 47901. At the time of the sexual assault described herein, Defendant Diocese had responsibility for Roman Catholic Church operations in the Indiana counties of Benton, Blackford, Boone, Carroll, Cass, Clinton, Delaware, Fountain, Fulton, Grant,

Hamilton, Howard, Jasper, Jay, Madison, Miami, Montgomery, Newton, Pulaski, Randolph, Tippecanoe, Tipton, Warren, and White.

3. Our Lady of Mt. Carmel (hereinafter “Defendant Mt. Carmel”) is a Roman Catholic church and, upon information and belief, an unincorporated nonprofit business entity in the State of Indiana, with its principal place of business at 1045 W. 146<sup>th</sup> Street, Carmel, Indiana 46032.

4. Father James J. Gear (hereinafter “Fr. Gear” or “Defendant Fr. Gear”) was at all times relevant an ordained priest in the Defendant Diocese. Upon information and belief, Fr. Gear’s current whereabouts are unknown.

5. Defendant Does 1 through 100, inclusive, are individuals and/or business or corporate entities incorporated in and/or doing business in Indiana whose true names and capacities are unknown to Plaintiff who therefore sues such defendants by such fictitious names, and who will amend the Complaint to show the true names and capacities of each such Doe defendant when ascertained. Each such Defendant Doe is legally responsible in some manner for the events, happenings and/or tortious and unlawful conduct that caused the injuries and damages alleged in this Complaint. Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 are sometimes hereinafter referred to as the “Defendants.”

6. Each Defendant is the agent, servant and/or employee of other Defendants, and each Defendant was acting within the course and scope of his, her or its authority as an agent, servant and/or employee of the other Defendants. Defendants, and each of them, are individuals, corporations, partnerships and other entities which engaged in, joined in and conspired with the other wrongdoers in carrying out the tortious and unlawful activities described in this Complaint, and Defendants, and each of them, ratified the acts of the other Defendants as described in this

Complaint.

7. The applicable statutes of limitations were tolled because the Plaintiff was placed under duress and was incapable of taking civil action as a result of the acts described herein. The applicable statute of limitations was tolled because the Defendants fraudulently concealed the fact that Fr. Gear was a known sexual predator from Plaintiff.

**BACKGROUND FACTS APPLICABLE TO ALL COUNTS**

8. Upon information and belief, Defendant Diocese knew that Fr. Gear had sexually abused other boys before, during, and after the time he abused John Doe.

9. On information and belief, Defendant Diocese did not tell any of the parishioners at Our Lady of Mt. Carmel, including the minor Plaintiff, what it knew about Fr. Gear: that he was a child molester and a danger to children.

10. By placing Fr. Gear at Defendant Mt. Carmel, Defendant Diocese affirmatively represented to minor children and their families at the parish, including Plaintiff and his family, that Fr. Gear did not have a history of molesting children, that Defendant Diocese did not know that Fr. Gear had a history of molesting children and that Defendant Diocese did not know that Fr. Gear was a danger to children.

11. Defendant Diocese was in a specialized position where it had knowledge that Plaintiff did not. Defendant Diocese was in a position to have this knowledge because it was Fr. Gear's employer and because the Defendant Diocese was responsible for Fr. Gear. Plaintiff on the other hand did not have access to the information that Defendants had regarding Fr. Gear.

12. Particularly, Defendant Diocese knew that Fr. Gear had sexually molested numerous children and that Fr. Gear was a danger to children before Fr. Gear molested Plaintiff.

13. Because Defendant was in a position of superiority and influence over Plaintiff, Plaintiff believed and relied upon these misrepresentations.

14. In reliance upon Defendant Diocese's misrepresentations, in 1974 to 1975, Plaintiff was sexually abused by Fr. Grear when Plaintiff was a minor. This abuse occurred while Plaintiff was a parishioner at Our Lady of Mt. Carmel and a student at Our Lady of Mt. Carmel school.

15. Plaintiff was 12 to 13 years old when he met Fr. Grear at Defendant Mt. Carmel. At the time, Fr. Grear was assigned to Brebeuf Preparatory School and he celebrated Mass at Our Lady of Mount Carmel. Plaintiff's parents invited Fr. Grear to dinner at their home and trusted him with their children. Fr. Grear spent lavishly on Plaintiff, buying him expensive gifts and taking him bowling, to the movies and restaurants, and on trips. On three separate occasions, Fr. Grear took Plaintiff to his apartment in the city of Indianapolis, Marion County, Indiana where sexual contact occurred. Upon information and belief, Plaintiff's parents reported the abuse to Defendant Mt. Carmel on or about 1975.

16. Fr. Grear came to the Diocese of Lafayette in 1966. He attended St. John's Home Seminary in Little Rock, Arkansas and finished at Notre Dame Seminary in New Orleans, Louisiana. He was ordained in the Diocese of Lafayette on May 22, 1970.

17. From the beginning, Fr. Grear's assignments were suspect. In 1971, the Official Catholic Directory lists Fr. Grear as being incardinated in the Defendant Diocese, but with the annotation "On Special Assignment" at 610 Lingle Ave, Diocese of Lafayette (IN).

18. In 1972, the Official Catholic Directory lists Fr. Grear as being assigned to Ball State University as a chaplain within the Defendant Diocese.

19. In 1973, the Official Catholic Directory lists Fr. Grear as being assigned to Saint

Francis of Assisi, University Parish, within the Defendant Diocese.

20. From 1974 through 1975, the Official Catholic Directory list Fr. Gear as being assigned “On Duty Outside Diocese” at Brebeuf Preparatory School within the Archdiocese of Indianapolis.

21. In 1976, the Official Catholic Directory lists Fr. Gear as being assigned “On Duty Outside Diocese” at Saint John’s Indian School in the Diocese of Phoenix.

22. In 1977 the Official Catholic Directory lists Fr. Gear as being assigned “On Duty Outside Diocese” as the Associate Director of Division of Religious Education in the Diocese of Phoenix.

23. From 1978 through 1979, the Official Catholic Directory lists Fr. Gear as “On Duty Outside Diocese” with the address of 400 East Monroe St. in Phoenix Arizona within the Diocese of Phoenix. This was the address for the Chancery Office for the Diocese of Phoenix.

24. From 1980 through 1985, Fr. Gear is not listed in the Official Catholic Directory.

25. In 1986, the Official Catholic Directory lists Fr. Gear as being assigned “On Duty Outside Diocese.”

26. From 1987 through 1989, the Official Catholic Directory lists Fr. Gear as being assigned “On Duty Outside the Diocese” at the South Bronx Pastoral Center in the Archdiocese of New York.

27. In 1990, the Official Catholic Directory lists Fr. Gear as “On Duty Outside Diocese” and assigned to Fr. Guenas Memorial School in the Archdiocese of Agaña, in the territory of Guam.

28. From 1991 through 1993, the Official Catholic Directory lists Fr. Gear as “Unassigned.”

29. Fr. Gear does not appear in the Official Catholic Directory after 1993.

30. Had Plaintiff and his family known what Defendant Diocese knew, that Fr. Gear had sexually molested numerous children before Plaintiff and that Fr. Gear was a danger to children, then Plaintiff would not have been sexually molested.

31. The Defendants were aware that a priest sexually abusing a child was foreseeable. The problem of clergy sexual abuse of minors is well-documented throughout the history of the Roman Catholic Church. As far back as 1051, St. Peter Damian wrote in the *Book of Gomorrah* that clergy who defiled boys should be dismissed from holy orders. (*Book of Gomorrah*, Ch. 6). Later, St. Peter Damian wrote in his *Rule of the Monastery of Compludo*, about the punishment for “a cleric or monk who seduces youths or young boys” being public flogging, loss of tonsure and six months in jail, among other punishments.

32. In 1143 or 1144, a professor at the University of Bologna named Gratian, known as the “Father of the Science of Canon Law,” identified in his work the *Decretum*, the sexual sin by a priest that he called *stuprum pueri*, which is the sexual use of boys by an adult male.

33. In 1961, the Vatican issued an instruction on the training of candidates for the priesthood, which was based upon the 1917 Code of Canon Law which stated: “Advancement to religious vows and ordination should be barred to those who are afflicted with evil tendencies to homosexuality or pederasty, since for them the common life and priestly ministry would constitute serious dangers.”

34. This knowledge that Catholic clergy were sexually abusing minors continued through the middle ages and into recent history. In 1962, Pope John XXIII approved the publication *De Modo Procedendi in Causis Solicitationis*, a special procedural law for solicitation of sex in the confessional. This document contained prohibitions prohibiting clergy

from having sex with minors under the age of sixteen. This document was distributed to every bishop and major religious superior in the world and was to be kept by them with the deepest secrecy. In addition, this document reflected the Catholic church's insistence on maintaining the highest degree of secrecy regarding the worst sexual crimes perpetrated by clergy.

35. In 1947, a priest named Fr. Gerald Fitzgerald founded a religious order of priests called the Servants of the Paracletes. This religious order was founded in order to assist and treat Catholic clergy who experienced mental health problems. By 1952, Fr. Fitzgerald wrote that he had already treated a handful of priests who had sexually abused minors. By 1963, the Paracletes were treating so many sexually abusive clergy that they developed a shorthand code, a "Code 3," to describe the offense. By 1966, the Paracletes began specializing in treatment of pedophile Catholic clergy.

36. As early as 1971, the issue of sexual misconduct by clergy was being discussed in the Commonwealth of Massachusetts. Bishop Bernard Flanagan, Bishop of Worcester (Massachusetts) testified that as early as February 1971, there had been discussions about sexual misconduct among priests. According to Bishop Flanagan, "I think by 1971 I had heard of other cases of this type [sic] sexual misconduct and I knew that they were taking place in other dioceses too."

37. That same year, Dr. Conrad Baars and Dr. Anna Terruwe presented a scholarly paper titled "The Role of the Church in the Causation, Treatment and Prevention of the Crisis in the Priesthood" to the 1971 Synod of Bishops at the Vatican and to the U.S. Conference of Catholic Bishops about psychiatric problems in Catholic clergy and how psychosexual immaturity manifested itself in heterosexual and homosexual activity. In 1990, psychologist and

priest, A.W. Richard Sipe, published a study involving 1,500 priests that concluded that six (6) percent of priests were sexually involved with minors.

38. In 1985, the public prosecution of a priest in Lafayette, Louisiana led to the creation of the 100-page document titled “The Problem of Sexual Molestation by Roman Catholic Clergy: Meeting the Problem in a Comprehensive and Responsible Manner” by Fr. Thomas Doyle, F. Ray Mouton and Fr./Dr. Michael Peterson. This document was distributed to every Catholic Bishop and religious order ordinary in the United States. A significant portion of this document describes how significant that the sexual abuse of children by Catholic clergy had become.

39. The Defendant Diocese is also aware that its own priests have sexually abused children. Specifically, the following clergy members from the Defendant Diocese have been accused of child sexual abuse:

- a. Fr. Kenneth Bohlinger was accused of taking boys on camping trips where he supplied alcohol and pornography, and then sexually abused them.
- b. Fr. Joseph A. Colletti was accused of child sex abuse.
- c. Fr. Donald Eder was accused of sexually abusing his niece.
- d. Fr. Gerald Funcheon was accused of abusing two teenage males.
- e. Fr. Frank Kilcline was accused of child sex abuse.
- f. Fr. Ambrose Kohne was accused of child sex abuse.
- g. Fr. Arthur Segó was accused of sexually abusing an elementary school girl and exposing himself to another girl.
- h. Fr. Donald Tracey was accused of abusing a number of high school students when he was assigned at Lafayette Central Catholic High School.

- i. Fr. Ronald Voss was accused of sexually abusing between 8 to 9 male teenagers.
- j. Fr. Raymond Weiber was accused of abusing male teens at St. Lawrence Church

in Muncie.

40. The sexual abuse and exploitation of Plaintiff and the circumstances under which it occurred caused Plaintiff to develop various psychological coping mechanisms, including not recognizing the extent of the injuries he experienced as a result of the sexual abuse described herein.

41. The applicable statute of limitations was tolled because the Defendants passively and actively fraudulently concealed their knowledge of material facts that Fr. Gear was a known sexual predator from Plaintiff.

42. Defendants negligently failed to disclose to Plaintiff that it knew that Fr. Gear was a child molester and a danger to children before he molested Plaintiff.

43. Defendants were in a specialized, confidential, or fiduciary relationship with Plaintiff at the time of the sexual assault described herein.

44. Plaintiff did not discover nor with reasonable diligence could he have discovered that Defendants knew that Fr. Gear was a child molester and a danger to children before Fr. Gear molested Plaintiff.

45. Defendant's actions were calculated to mislead and hinder Plaintiff from obtaining and prevent inquiry or elude investigation into information about Defendants' knowledge about Fr. Gear's history of sexually molesting children, thereby preventing Plaintiff from obtaining the knowledge necessary to discover a potential cause of action.

46. As a direct result of the wrongful conduct alleged herein, Plaintiff has suffered, and continues to suffer great pain of mind and body, shock, emotional distress, physical

manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will continue to be prevented from performing Plaintiff's daily activities and obtaining the full enjoyment of life; has sustained and continues to sustain loss of earnings and earning capacity; and/or has incurred and continues to incur expenses for medical and psychological treatment, therapy, and counseling.

## **FIRST CAUSE OF ACTION**

### **ACTUAL FRAUD**

47. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count.

48. Defendants Diocese and Mt. Carmel affirmatively represented to Plaintiff and his family that Defendant Fr. Grear did not have a history of molesting children, that Defendants Diocese and Defendant Mt. Carmel did not know that Defendant Fr. Grear had a history of molesting children and that Defendants Diocese and Mt. Carmel did not know that Defendant Fr. Grear was a danger to children.

49. Defendant Fr. Grear did have a history of sexually molesting children. Defendants Diocese and Mt. Carmel knew that Defendant Fr. Grear had a history of sexually molesting children and that he was a danger to children.

50. Plaintiff justifiably relied upon Defendants Diocese's and Mt. Carmel's misrepresentations, which proximately caused him to be sexually molested by Defendant Fr. Grear and suffer the other damages described herein.

51. Defendants Diocese and Mt. Carmel knew that their misrepresentations were false

or at least were reckless without care of whether these representations were true or false.

52. Defendants Diocese and Mt. Carmel made the misrepresentation with the intent to deceive Plaintiff and to induce him to act on the misrepresentations to his detriment.

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

## **SECOND CAUSE OF ACTION**

### **CONSTRUCTIVE FRAUD**

54. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count.

55. As a result of Plaintiff being a minor, and by Defendants Diocese and Mt. Carmel undertaking the care and guidance of the then vulnerable minor Plaintiff, Defendants Diocese and Mt. Carmel held a position of empowerment over Plaintiff.

56. Further, Defendants Diocese and Mt. Carmel, by holding themselves out as shepherds and leaders of the Roman Catholic Church, solicited and/or accepted this position of empowerment. This empowerment prevented the then minor Plaintiff from effectively protecting himself and Defendants Diocese and Mt. Carmel thus entered into a fiduciary relationship with Plaintiff.

57. Defendants Diocese and Mt. Carmel were in specialized positions where they had knowledge that Plaintiff did not. Defendants Diocese and Mt. Carmel were in positions to have this knowledge because they were Defendant Fr. Gear's employer and because the Defendants were responsible for Defendant Fr. Gear. Plaintiff on the other hand was a child. As a child, he was not in a position to have information about Defendant Fr. Gear's molestation of other children.

58. As a fiduciary to Plaintiff, Defendants Diocese and Mt. Carmel had a duty to obtain and disclose information relating to sexual misconduct and other inappropriate behavior of Defendant Fr. Gear.

59. Defendants Diocese and Mt. Carmel affirmatively represented to Plaintiff and his family that Defendant Fr. Gear did not have a history of molesting children, that Defendants did not know that Defendant Fr. Gear had a history of molesting children and that Defendants did not know that Defendant Fr. Gear was a danger to children.

60. Defendant Fr. Gear did have a history of sexually molesting children. Defendants Diocese and Mt. Carmel knew that Defendant Fr. Gear had a history of sexually molesting children and that he was a danger to children.

61. Plaintiff justifiably relied upon Defendants Diocese's and Mt. Carmel's misrepresentations, which proximately caused him to be sexually molested by Defendant Fr. Gear and suffer the other damages described herein.

62. Defendants Diocese and Mt. Carmel gained an advantage at the expense of Plaintiff, including that Defendants were able to avoid scandal by concealing Defendant Fr. Gear, Defendants were able to protect their finances by representing to parents and children that Defendant Fr. Gear did not have history of abusing children, and Defendants were able to keep

their position of power and prestige in the community. Plaintiff, on the other hand, had to suffer sexual molestation at the hands of a trusted priest and also suffer the other damages alleged herein.

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

### **THIRD CAUSE OF ACTION**

#### **CHILDHOOD SEXUAL ABUSE**

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

65. In approximately 1975 or 1976, Defendant Fr. Gear engaged in unpermitted, harmful and offensive sexual conduct and contact upon the person of Plaintiff in violation of Indiana law. Said conduct was undertaken while the Defendant Fr. Gear was an employee and agent of Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100, while in the course and scope of employment with Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100, and/or was ratified by Defendant Diocese, Defendant Mt. Carmel, Does 1 through 100.

66. Prior to or during the abuse alleged above, Defendants knew, had reason to know, or were otherwise on notice of the unlawful sexual conduct by the Defendant Fr. Gear. Defendants failed to take reasonable steps and failed to implement reasonable safeguards to

avoid acts of unlawful sexual conduct in the future by the Defendant Fr. Gear, including, but not limited to, preventing or avoiding placement of the Defendant Fr. Gear in functions or environments in which contact with children was an inherent part of those functions or environments. Furthermore, at no time during the periods of time alleged did Defendants have in place a system or procedure to supervise and/or monitor employees, volunteers, representatives, or agents to ensure that they did not molest or abuse minors in Defendants' care, including the Plaintiff.

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

#### **FOURTH CAUSE OF ACTION**

##### **NEGLIGENCE**

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

69. Defendants had a duty to protect the minor Plaintiff when he was entrusted to their care by Plaintiff's parents. Plaintiff's care, welfare, and/or physical custody was temporarily entrusted to Defendants. Defendants voluntarily accepted the entrusted care of Plaintiff. As such, Defendants owed Plaintiff, a minor child, a special duty of care, in addition to a duty of ordinary care, and owed Plaintiff the higher duty of care that adults dealing with

children owe to protect them from harm.

70. Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100, by and through their agents, servants and employees, knew or reasonably should have known of the Defendant Fr. Gear's dangerous and exploitive propensities and/or that the Defendant Fr. Gear were unfit agents. It was foreseeable that if Defendants did not adequately exercise or provide the duty of care owed to children in their care, including but not limited to Plaintiff, the children entrusted to Defendants' care would be vulnerable to sexual abuse by the Defendant Fr. Gear.

71. Defendants breached their duty of care to the minor Plaintiff by allowing the Defendant Fr. Gear to come into contact with the minor Plaintiff without supervision; by failing to adequately hire, supervise, or retain the Defendant Fr. Gear who they permitted and enabled to have access to Plaintiff; by failing to investigate or otherwise confirm or deny such facts about the Defendant Fr. Gear; by failing to tell or concealing from Plaintiff, Plaintiff's parents, guardians, or law enforcement officials that the Defendant Fr. Gear was or may have been sexually abusing minors; by failing to tell or concealing from Plaintiff's parents, guardians, or law enforcement officials that Plaintiff was or may have been sexually abused after Defendants knew or had reason to know that the Defendant Fr. Gear may have sexually abused Plaintiff, thereby enabling Plaintiff to continue to be endangered and sexually abused, and/or creating the circumstance where Plaintiff was less likely to receive medical/mental health care and treatment, thus exacerbating the harm done to Plaintiff; and/or by holding out the Defendant Fr. Gear to the Plaintiff and his parents or guardians as being in good standing and trustworthy. Defendants cloaked within the facade of normalcy Defendants' and/or the Defendant Fr. Gear's contact and/or actions with the Plaintiff and/or with other minors who were victims of the Defendant Fr. Gear, and/or disguised the nature of the sexual abuse and contact.

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

### **FIFTH CAUSE OF ACTION**

#### **NEGLIGENT SUPERVISION/FAILURE TO WARN**

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

74. Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 had a duty to provide reasonable supervision of the Defendant Fr. Gear; to use reasonable care in investigating the Defendant Fr. Gear; and to provide adequate warning to the Plaintiff, the Plaintiffs' family, minor students, and minor parishioners of the Defendant Fr. Gear's dangerous propensities and unfitness.

75. Defendant Diocese, Defendant Mt. Carmel and Does 1 through 100, by and through their agents, servants and employees, knew or reasonably should have known of the Defendant Fr. Gear's dangerous and exploitive propensities and/or that the Defendant Fr. Gear was an unfit agent. Despite such knowledge, Defendant Diocese, Defendant Mt. Carmel, Defendant and Does 1 through 100 negligently failed to supervise the Defendant Fr. Gear in the position of trust and authority as Roman Catholic Priests, religious instructors, counselors, school administrators, school teachers, surrogate parents, spiritual mentors, emotional mentors,

and/or other authority figures, where he was able to commit the wrongful acts against the Plaintiff. Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 failed to provide reasonable supervision of the Defendant Fr. Gear, failed to use reasonable care in investigating the Defendant Fr. Gear, and failed to provide adequate warning to Plaintiff and Plaintiffs' family of the Defendant Fr. Gear's dangerous propensities and unfitness. Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 further failed to take reasonable measures to prevent future sexual abuse.

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

## **SIXTH CAUSE OF ACTION**

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

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

78. Defendants breached their duty to take reasonable protective measures to protect Plaintiff and other minor parishioners and/or students from the risk of childhood sexual abuse by the Defendant Fr. Gear, such as the failure to properly warn, train, or educate Plaintiff and other minor parishioners and/or students about how to avoid such a risk.

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

### **SEVENTH CAUSE OF ACTION**

#### **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

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

81. Defendants' conduct was extreme and outrageous and was intentional or done recklessly.

82. As a result of Defendants' conduct, Plaintiff has experienced and continues to experience severe emotional distress.

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

**EIGHTH CAUSE OF ACTION**

**PREMISES LIABILITY**

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

85. At all times herein mentioned, Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 were in possession of the property where the Plaintiff was groomed and assaulted by the Defendant Fr. Gear, and had the right to manage, use and control that property.

86. At all times herein mentioned, Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 knew that the Defendant Fr. Gear had a history of committing sexual assaults against children, and that any child at, among other locations, Defendant Mt. Carmel, was at risk to be sexually assaulted by the Defendant Fr. Gear.

87. Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 knew or should have known that Defendant Mt. Carmel had a history of sexual assaults against children committed by the Defendant Fr. Gear and that any child at, among other locations, the Defendant Mt. Carmel, was at risk to be sexually assaulted. It was foreseeable to Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 that the Defendant Fr. Gear would sexually assault children if they continued to allow the Defendant Fr. Gear to teach, supervise, instruct, care for, and have custody and control of and/or contact with children.

88. At all times herein mentioned, Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 knew or should have known the Defendant Fr. Gear was repeatedly committing sexual assaults against children.

89. It was foreseeable to Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 that the sexual assaults being committed by the Defendant Fr. Gear would continue if Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 continued to allow the

Defendant Fr. Gear to teach, supervise, instruct, care for, and have custody of and/or contact with young children.

90. Because it was foreseeable that the sexual assaults being committed by the Defendant Fr. Gear would continue if Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 continued to allow them to teach, supervise, instruct, care for, and have custody of and/or contact with young children, Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 owed a duty of care to all children, including Plaintiff, exposed to the Defendant Fr. Gear. Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 also owed a heightened duty of care to all children, including Plaintiff, because of their young age.

91. By allowing the Defendant Fr. Gear to teach, supervise, instruct, care for, and have custody of and/or contact with young children, and by failing to warn children and their families of the threat posed by the Defendant Fr. Gear, Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 breached their duty of care to all children, including Plaintiff.

92. Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 negligently used and managed Defendant Mt. Carmel, and created a dangerous condition and an unreasonable risk of harm to children by allowing the Defendant Fr. Gear to teach, supervise, instruct, care for and have custody of and/or contact with young children at, among other locations, Defendant Mt. Carmel.

93. As a result of the dangerous conditions created by Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100, numerous children were sexually assaulted by the Defendant Fr. Gear.

94. The dangerous conditions created by Defendant Diocese, Defendant Mt. Carmel, and Does 1 through 100 were the proximate cause of Plaintiff's injuries and damages.

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

WHEREFORE, Plaintiff prays for damages; costs; interest; statutory/civil penalties according to law; and such other relief as the court deems appropriate and just.

**JURY DEMAND**

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

KOCH & McAULEY P.C.

By: /s/ Eric Allan Koch  
Eric Allan Koch

**Eric Allan Koch  
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