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STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

File No.: 62-CV-13-4075

Doe 1,

Plaintiff,

v.

Archdiocese of St. Paul and Minneapolis, Diocese of Winona, and Thomas Adamson,

Defendant.

ORDER DENYING SUMMARY JUDGMENT MOTIONS REGARDING PLAINTIFF'S NEGLIGENCE AND PUBLIC NUISANCE CLAIMS

The above-entitled matter came on for hearing on the 21st day of July, 2014, before the Honorable John B. Van de North, Jr., on the Archdiocese and the Diocese's Motions for Summary Judgment pursuant to Rule 56 of the Minnesota Rules of Civil Procedure. Plaintiff was represented by Jeff Anderson, Esq., and Michael Finnegan, Esq.; the Archdiocese was represented by Daniel Haws, Esq., and Thomas Wieser, Esq.; and the Diocese was represented by Thomas Braun, Esq., and Christopher Coon, Esq. All parties made timely and substantial pre- and post-hearing submissions, and the Court took the matter under advisement on August 11, 2014.

Based on the file, record, and the arguments of counsel, the Court now makes the following:

ORDER

1. The Archdiocese's Motion for Summary Judgment as to Plaintiff's negligence claims in Counts III-V of his Complaint is **DENIED**.

2. The Archdiocese's Motion for Summary Judgment as to Plaintiff's public nuisance claim in Count II of his Complaint is **DENIED**.

3. The Diocese's Motion for Summary Judgment as to Plaintiff's public nuisance claim in Count VI of his Complaint is **DENIED**.

4. The attached memorandum is incorporated herein by reference and contains the Court's rationale for its decision regarding Doe 1's public nuisance claim (Count II and VI of the Complaint).

5. The rationale for the Court's decision regarding the Archdiocese's negligence claims (Count III-V of the Complaint) is contained in the transcript of the July 21, 2014, hearing and in the attached memorandum.

6. Copies of this order will be served on counsel for the parties.

Dated: 9-2-14

BY THE COURT:

John B. Van de North, Jr.
Judge of the District Court
File No. 62-CV-13-4075

MEMORANDUM

File No. 62-CV-13-4075

INTRODUCTION AND FACTUAL BACKGROUND

At the July 21 hearing the Court heard oral argument on the Archdiocese and Diocese's motions for summary judgment on Doe 1's public nuisance claim and the Archdiocese's motion for summary judgment relating to Doe 1's general negligence, negligent supervision, and negligent retention claims. The Diocese also brought constitutional challenges to the Minnesota Child Victims Act, but it withdrew those challenges prior to oral argument.

This case has a long and complex history. The underlying abuse alleged by Doe 1 occurred in 1976 and 1977. However, relevant facts date back to the 1960s when Father Adamson was a priest in the Diocese of Winona. As early as 1963, Bishop Loras Watters was aware of "hearsay and rumors" that Father Adamson had a "sexual problem" with little boys. (Finnegan Aff. Ex. 162, pps. 9-12.) During the 1960s and early 1970s, Father Adamson was frequently transferred to different parishes: in '63 he was transferred to St. John's Church in Caledonia (Id. at Ex. 1); in '64 he was transferred to Lourdes High School in Rochester (Id. at Ex. 3); in '67 to St. Theodore Church in Albert Lea (Id. at Ex. 4); in '68 to St. Lawrence Church in Fountain (Id. at Ex. 5); in '70 to St. Patrick's Parish in Lanesboro (Id. at Ex. 6); and in '71 to St. Francis of Assisi in Rochester (Id. at Ex. 7). In 1974, Father Adamson was sent to the Institute of Living in Hartford, Connecticut, where he was diagnosed with a "sexual orientation disturbance." (Id. at Ex. 8.)

In 1975, Bishop Watters of the Diocese contacted Archbishop John Roach about placing Father Adamson in residence in the Archdiocese (Id. at Ex. 176, Roach Trial Testimony at 24-25), while he received regular

therapy from Father Ken Pierre, who was a priest-psychologist and the director of the Consultation Services Center at the Archdiocese. (Id. at Ex. 12.; Pierre Aff. at ¶¶ 4-6.) Archbishop Roach agreed to move Father Adamson to the Archdiocese and placed him at St. Leo Parish in St. Paul. (Id. at Ex. 176, Roach Trial Testimony at 46:1-5.) Father Adamson was then moved to St. Thomas Aquinas parish. (Id. at Ex. 210, Roach Depo. at 29:14-16.) At St. Thomas Aquinas, Father Adamson revived the altar-boy program. (Id. at Ex. 113, Doe 1 Depo. 165:8-20.) Doe 1 became an altar boy, and he alleges that Father Adamson sexually abused him in Father Adamson's bedroom in the rectory of St. Thomas Aquinas, in the basement at St. Thomas Aquinas, and the locker room of a health club. (Compl. ¶ 18.)

APPLICABLE LEGAL STANDARD

The summary judgment standard is well known and need not be repeated here in its entirety. As a general matter, summary judgment must be granted when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits if any, show that there is no genuine issue as to any material fact and that either party is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. The burden of proof is on the moving party. Miller & Schroeder, Inc. v. Gearman, 413 N.W.2d 194, 197 (Minn. Ct. App. 1987). The evidence will be reviewed in the light most favorable to the nonmoving party. Ostendorf v. Kenyon, 347 N.W.2d 834, 836 (Minn. Ct. App. 1984). If reasonable persons might draw different conclusions from the evidence that is presented, summary judgment should be denied. Alberts v. United Stockyards Corp., 413 N.W.2d 628, 629 (Minn. Ct. App. 1987) (citing Anderson v. Twin City Rapid Transit Co., 84 N.W.2d 593, 605 (Minn. 1957)). A nonmoving party can create a genuine issue of fact through direct or circumstantial evidence; but the evidence must do more than raise a metaphysical doubt as to whether a

genuine issue of material fact exists. Liberty Lobby, 477 U.S. at 248-49; Murphy v. Country House, Inc., 240 N.W.2d 507, 512 (Minn. 1976); Schroeder v. St. Louis County, 708 N.W.2d 497, 507 (Minn. 2006).

DISCUSSION

1. THERE ARE GENUINE ISSUES OF MATERIAL FACT PRECLUDING SUMMARY JUDGMENT AS TO DOE 1'S NEGLIGENCE CLAIMS

Doe 1 brings three negligence claims against the Archdiocese: general negligence, negligent supervision, and negligent retention.[1] The Archdiocese has asked the Court to dismiss these claims because, it argues, Doe 1 has not shown any genuine issues of material fact for trial. For the reasons discussed on the record of the July 21 hearing, and for the reasons briefly discussed below, the Court concludes that Doe 1 has met his burden at summary judgment and denies the Archdiocese's motion.

Foreseeability is an element of each of Doe 1's negligence claims. M.L. v. Magnuson, 531 N.W.2d 849, 856-60 (Minn. Ct. App. 1995); see generally, Transcript of Proceedings, July 21, 2014, ("Tr.") at 119-120. Accordingly, the Court will first address this issue. To determine whether risk of injury from the Defendants' conduct is foreseeable, the Court examines "whether the specific danger was objectively reasonable to expect, not simply whether it was within the realm of any conceivable possibility." Domagala v. Rolland, 805 N.W.2d 14, 26 (Minn. 2011). It is a longstanding legal tradition in Minnesota that close questions of foreseeability should be given to the jury. Lundgren v. Fultz, 354 N.W.2d 25, 28 (Minn. 1984). In this case, Doe 1 has submitted sufficient evidence to justify sending this question to the jury. (Tr. at 120-121, citing Erickson v. Curtis Investment, 447 N.W.2d 165 (Minn. 1989).)

[1] Doe 1 brings these same claims against the Diocese, but the Diocese did not bring a summary judgment motion on any of the negligence claims.

Father's Adamson sexual abuse of Doe 1 was "objectively reasonable to expect" by the Archdiocese. For example, a 1984 Letter from Bishop Watters to Archbishop Roach states:

> I am very sorry that Father Adamson's many talents continue to be compromised because of his involvement with juvenile males; and all the more so now that his irresponsible conduct has now become a matter of public record.
>
> When I asked you to consider helping Father Adamson in January of 1975 I indicated that I could no longer ask him [Father Adamson] to accept pastoral responsibility in the Winona Diocese because of the same type of problem.

(Finnegan Aff. Ex. 23; Tr. at 80-81.) This letter creates a genuine issue of fact as to whether the Archdiocese was aware, in 1975, that Father Adamson had pedophilic tendencies, and that it would be objectively reasonable to expect Adamson to act on those tendencies. The Archdiocese contends that other evidence in the record refutes such an interpretation; however, such a weighing of evidence is not appropriate at the summary judgment stage. Alberts v. United Stockyards Corp., 413 N.W.2d at 629.

Additionally, a 1976 letter from Archbishop Roach to Father John Kinney corroborates a reasonable inference that the Archdiocese knew of Father Adamson's pedophilia. The letter states:

> For reasons which Bishop Watters was unwilling to discuss on the telephone, but which he promised to share with me later, he is asking that Father Adamson continue to work in the diocese for another year or year and a half . . . . Bishop Watters assures me that Father Adamson is a good priest, who is a victim of a situation in Winona and he feels that he would be much better off if he were to be outside the diocese for at least another year.

(Finnegan Aff. Ex. 14.) Similarly, in a 1975 letter to Archbishop Roach, Bishop Watters emphasized the importance of Father Adamson continuing to see Father Kenneth Pierre for therapy.[2] (Finnegan Aff. Ex. 12). This series of letters creates a genuine fact issue for the jury that the Archdiocese was aware of Adamson's pedophilia. (Tr. at 121-22).

With respect to the other elements of Doe 1's general negligence claim, the Court also concludes that summary judgment is not appropriate. To succeed on his claim of general negligence, Doe 1 must prove: (1) the existence of a legal duty; (2) the breach of that duty; (3) that the breach was the proximate cause of his harm; (4) that he suffered damages. Gilbertson v. Leininger, 599 N.W.2d 127, 131 (Minn. 1999). The general rule is that a person does not owe a duty of care to another if the harm is caused by a third person. Doe 169 v. Brandon, 845 N.W.2d 174, 177-78 (Minn. 2014). However, there is an exception to that rule "when there is a special relationship between a plaintiff and a defendant and the harm to the plaintiff is foreseeable." Id. at 178 (emphasis added). Whether there is a special relationship is predominately a factual inquiry. Id.; (Tr. at 90:15-25.) Here, there is at least a genuine fact issue as to whether Father Adamson had control over a vulnerable and dependent Doe 1, and whether the control created a special relationship between Doe 1 and

[2] At oral argument, the Court asked counsel for additional briefs on whether Father Kenneth Pierre's knowledge regarding Adamson could be imputed to the Archdiocese. After further briefing, the Court agrees with the Archdiocese that Father Pierre's knowledge, on this record, cannot be imputed to the Archdiocese. The general rule is that a corporation is charged with constructive knowledge of material facts its agent acquires while acting in the course of employment within the scope of his or her authority. Travelers Indemnity Co. v. Bloomington Steel & Supply Co., 718 N.W.2d 888, 895-96 (Minn. 2006). However, an exception to that rule is that a corporation is not imputed knowledge if the agent has a duty not to disclose and did not disclose that information. Restatement (Third) of Agency § 5.03; Trentor v. Pothen, 49 N.W. 129, 130 (Minn. 1891). Here, Father Pierre's affidavit makes it clear that he did have a duty not to disclose knowledge gained during his therapy sessions with Father Adamson, and that he did not disclose any information about Father Adamson prior to 1980. Furthermore, the letters cited by Doe 1 (Finnegan Aff. Exs. 203, 13, 12) do not demonstrate that Father Pierre disclosed any confidential information prior to 1980.

Father Adamson's employer, the Archdiocese. (Tr. at 114:20-24, citing Donaldson v. YWCA of Duluth, 539 N.W.2d 789 (Minn. 1995).)

Similarly, summary judgment is not appropriate with respect to Doe 1's negligent retention and negligent supervision claims. Negligent retention arises when, during the course of employment, the employer becomes aware or should have become aware of problems with an employee that indicated his unfitness, and the employer fails to take appropriate action. J.M. v. Minnesota Dist. Council of Assemblies of God, 658 N.W.2d 589, 597. Negligent supervision is the failure of the employer to exercise ordinary care in supervising the employment relationship so as to prevent the foreseeable misconduct of an employee from causing harm to other employees. Yunker v. Honeywell, Inc., 296 N.W.2d 419, 423 (Minn. Ct. App. 1993) (citing Dean v. St. Paul Union Depot Co., 43 N.W. 54 (Minn. 1888). Father Adamson's contact with Doe 1 arose completely within his employment as an Archdiocesan priest. The nexus with employment is especially strong here, considering that the alleged abuse occurred, on two occasions, at Father Adamson's place of employment and in connection with his activation of a dormant altar-boy program at the parish. (Tr. at 119:16-20.) Accordingly, there are at least genuine issues of fact as to whether the abuse occurred during the course of employment; whether the Archdiocese knew or should have known about the abuse; and whether the Archdiocese properly supervised and retained Adamson. (Tr. at 116-17.)

2. DOE 1 HAS DEMONSTRATED GENUINE ISSUES OF MATERIAL FACT FOR TRIAL REGARDING HIS PUBLIC NUISANCE CLAIMS AND SUMMARY JUDGMENT MUST BE DENIED

On summary judgment, all facts and honest inferences are considered by the Court in a light most favorable to the nonmoving party. Ostendorf v. Kenyon, 347 N.W.2d at 836. Here, those facts and

inferences demonstrate that Doe 1 has carried his burden under Rule 56 to demonstrate genuine issues of material fact for trial with respect to whether a public nuisance exists; whether his public nuisance claim is barred by legal or equitable limitation theories; and whether Doe 1 has suffered a harm peculiar to him sufficient to confer standing to assert a public nuisance claim.

In its order of December 10, 2013, the Court refused to dismiss Doe 1's public nuisance claim, stating that to do so without allowing him an opportunity for discovery to develop factual support would require too narrow a reading of both Rule 12 and Rule 8, which embody Minnesota's tradition of notice pleading. The Court is aware that since its December 2013 decision, several other state trial judges have held that public nuisance claims comparable to Doe 1's should be dismissed as a matter of law. The Court reaffirms its earlier Rule 12 ruling, with its utmost respect for the contrary opinions of other judges.[3]

The Court takes note of the recent decision of the Minnesota Supreme Court in Walsh v. US Bank, N.A., No. A13-0742, 2014 W.L. 3844201 at *5 (Minn. Aug. 6, 2014). In Walsh, our Supreme Court reaffirmed its decisions in First National Bank of Henning v. Olson, 74 N.W.2d 123 (Minn. 1955) and Northern States Power Co. v. Franklin, 122 N.W.2d 26 (Minn. 1963) as the "leading cases" regarding the interpretation of Minn. R. Civ. P. 8.01. In Minnesota, a complaint need only provide fair notice of the plaintiff's claim and the grounds upon which it rests. Northern States Power, 122 N.W.2d at 29. It should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support

[3]Particularly persuasive is the Honorable John Guthmann's comprehensive analysis of what conduct constitutes a public nuisance in Doe 30 v. Diocese of New Ulm; Diocese of Duluth; and Oblates of Mary Immaculate, et al., No. 62-CV-14-871 at pps. 18-23 (Ramsey Count Dist. Ct. July 30, 2014).

of her claim which would entitle her to relief. Walsh, at *3 (citing Conley v. Gibson, 355 U.S. 41 (1957), abrogated by Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 562-63 (2007). The Walsh Court expressly rejected what many consider the stricter "plausibility" standard articulated in various federal cases, including Bell Atlantic Corp. v. Twombly and Ashcroft v. Iqbal, 556 U.S. 662 (2009). Id. at *4. Doe 1's complaint satisfies the notice pleading tradition established in Olson and Franklin, and the extensive discovery conducted by the Plaintiff in this action has been appropriate. Indeed, facts developed in the course of discovery lead the Court to conclude that Doe 1's public nuisance claim should survive summary judgment and continue on to trial. Finally, the Court's determinations at the Rule 12 stage and again here at Rule 56 are consistent with the well-established proposition in Minnesota that the primary objective of the law is to dispose of cases on the merits. Sorenson v. St. Paul Ramsey Medical Center, 457 N.W.2d 188, 192 (Minn. 1990).

a. There are genuine issues of material fact regarding whether the Defendants have created an ongoing public nuisance.

A public nuisance is defined as "an unreasonable interference with a right common to the general public." Restatement (Second) of Torts § 821B (1979). Similarly, under Minnesota statutes a public nuisance is a condition which "unreasonably annoys, injures or endangers the safety, health, morals, comfort, or repose of any considerable number of members of the public." Minn. Stat. § 609.74.

Failing to disclose information about an accused priest is akin to, and conceivably more offensive and dangerous, than other acts that have been considered public nuisances. For example harboring "worrisome dogs," maintaining houses of prostitution, or swearing in public have been found to be public nuisances. See Doe 30 v. Diocese of New Ulm; Diocese of Duluth; and Oblates of Mary Immaculate, et al., No. 62-CV-14-871 at pps. 18-

23 (Ramsey Count Dist. Ct. July 30, 2014) (citing Minn. Stat. 347.04 (2006); State ex. rel. Wilcox v. Gilbert, 147 N.W. 953, 955 (Minn. 1914); Wilson v. Parent, 228 Or. 354, 367-68 (1961)). The Court need look no further than Fathers Adamson and Curtis Wehmeyer as unfortunate examples of the horrendous consequences that can flow from intentional and misguided efforts to protect pedophile priests at the expense of minors.

Accordingly, there is a question for trial on whether the Archdiocese and Diocese for decades intentionally failed to exercise their common-law duty of due care to the public by not disclosing information about credibly accused and accused pedophile priests. A reasonable jury could find that the Defendants maintained or permitted a condition which unreasonably endangered the safety, health, morals, comfort or repose of any considerable number of members of the public.

b. Doe 1's public nuisance claim is not barred by any applicable statute of limitations or by the equitable doctrine of laches.

Plaintiff's discovery creates triable issues as to whether Defendants' failure to disclose information regarding priests accused of sexual abuse was of a continuing nature and tolled the six-year statute of limitations under Minn. Stat. § 541.05. Under the continuing violation doctrine, the final act is used to determine when the statute of limitations period begins for the entire course of conduct. Sigurdson v. Isanti County, 448 N.W.2d 62, 66 (Minn. 1989). However, a plaintiff who is merely "feeling the present effects" of a past wrongful act may not avoid the statute of limitations. Mille Lacs Band of Chippewa Indians v. Minnesota, 853 F.Supp. 1118, 1126 (D. Minn. 1994).

The record here contains evidence of a series of continuing acts by Defendants following their initial failure to disclose information about offending priests which tolls the running of the six-year statute. For

example, in 2013, the Safe Environment Working Group, operating under the auspices of the Archdiocese, considered and then rejected the notion of disclosing information about priests accused of sexual misconduct with minors. (Haselberger Aff. at ¶ 28.) Similarly, ongoing revelations about a number of priests, including Fathers LaVan and Wehmeyer, support a conclusion that concealing their identities and improper conduct demonstrates a continuing nuisance.[4] These ongoing acts of concealment are not mere effects of the original nuisance perpetrated on or around 2004, but separate acts which tolled any statute of limitations that may have been triggered in 2004.[5]

Additionally, the doctrine of laches does not bar Doe 1's nuisance claim. Doe 1 argues persuasively that the equitable doctrine of laches relied on by the Diocese has no application in the face of a governing statute of limitations. Aronovitch v. Levy, 56 N.W.2d 570 (Minn. 1953). Although tolled by continuing violations, there is an applicable statute of limitations governing Plaintiff's nuisance claim, Minn. Stat. § 541.05, subd. 1(2), (5).

Furthermore, any opportunity that the Diocese may have had to rely upon laches is extinguished by its own inequitable behavior. It is a well-established principle that "one who comes into equity must come with clean hands." Home Ins. Co. v. Nat'l Union Fire Ins. Of Pittsburg, 658 N.W.2d 522, 535 (Minn. 2003). Here, the record is littered with

[4] The court is issuing an order on the same date as the instant order which provides a mechanism pursuant to which information regarding accused priests which has been filed by Defendants under seal may be disclosed.

[5] In addition, at the time of the Court's December 2013 order, the record was clear that Doe 1 was not asserting damages as a remedy for his public nuisance cause of action. However, his counsel subsequently indicated that he and his client wished to reverse field and assert a claim of at least nominal damages for purposes of claim revival under 2013 Minn. Laws at 729. The subject of Doe 1's eligibility for claim revival under the 2013 amendments to the Child Victims Act is a matter that requires further attention, perhaps during motions in limine or following receipt of evidence during Doe 1's case in chief at trial.

documentary evidence of the Diocese concealing Father Adamson's sexual abuse of minors, both before and after his alleged abuse of Doe 1. Bishop Watters concealed a 15-year pattern of child abuse by Father Adamson in five different communities in the Diocese before arranging his relocation to the Archdiocese in 1975, where he molested Doe 1. No court could reasonably extend the equitable safe haven of laches in the face of this conduct.

c. Doe 1 has standing to bring a public nuisance claim as an individual who suffered special or peculiar injuries.

The more recent and better reasoned cases suggest that private parties initiating suits for public nuisance must prove harm peculiar to them, as distinguished from the harm the alleged nuisance poses for the general public. N. Star Legal Found v. Honeywell Project, 355 N.W.2d 186, 189 (Minn. Ct. App. 1984); see Restatement (Second) of Torts § 821C (1979) cmt. a. As stated above, for Doe 1 to proceed to trial on his public nuisance claim, he must demonstrate at least a genuine issue of material fact justifying a trial. The Court concludes that he has met his burden with his own sworn deposition testimony, and with the initial and supplemental sworn affidavits of Robert Geffner, Ph.D., a licensed psychologist. These sworn statements and honest inferences drawn from them create a genuine issue of fact for trial on whether concealment of information by the Diocese and Archdiocese has harmed Doe 1, along with other sex-abuse survivors in different ways than the members of the public who were not abused. Doe 1 provided the following insights into the peculiar nature of the harm he has suffered as a result of Father Adamson's abuse:

Q. [W]ere you aware yourself that you had been abused by Adamson?

A. Absolutely.

Q. Okay. And that's something you've never forgotten?

A. Yes, that's true, I've never forgotten.

(Doe 1 Depo pp. 20.)

Q. [B]ut what prompted you to call Mr. Anderson's office in January of 2011?

A. The feeling that the whole truth wasn't being spoken and that people were still being abused and mistreated and I wanted to support people that would need that.

Q. And how would you do that?

A. Like this.

Q. By bringing a claim?

A. If that's what it took.

Q. What else were you – how did you feel that that would help support others?

A. Just by telling the truth and not sitting quietly while other people had spoken up.

(Doe 1 Depo pp. 21-22.)

A. It was difficult to watch people that had been abused after myself or before myself and sit there and watch that and know that I hadn't spoken up.

Q. And by speaking up, what do you think that you've helped do something? [sic]

A. I believe I have.

Q. And in what way?

A. By releasing the names of priests that abused children and making it more public.

(Doe 1 Depo. p. 23.)

A. Another concern I had was, people that had been abused in the past a lot of those people feel alone, like maybe they're the only ones, maybe it's something that only happened to them. And by making this stuff public, maybe it can help relieve some of that, that they weren't the only ones, that they aren't alone.

(Doe 1 Depo. p. 31.)

A. There's some feelings of guilt that, you know, maybe this is something you brought on yourself, but some of that can be

relieved by seeing that the same priest had abused multiple other people, then you start to take some of the guilt off of yourself, yes.

Q. So you're referring to the fact that Adamson had abused you?

A. That's the only thing I can refer to because that's my life.

(Doe 1 Depo. p. 32.)

The testimony above establishes a genuine issue of material fact for trial as to whether Doe 1 was a victim of traumatic acts of sexual abuse by Father Adamson as a young boy; whether the memory of the events of abuse linger to the present day; and whether he is a member of a group of sexual-abuse survivors exhibiting a variety of post-traumatic stress symptoms. As the public nuisance statute, Minn. Stat. § 609.741 provides, a harmful condition must be found to exist that damages "any considerable number of members of the public."

While Doe 1's testimony is sufficient to allow an honest inference that he is one of a number of sexual-abuse survivors within the community, he does not possess the education, training or experience to offer an opinion as to how he and other sexual-abuse survivors suffer a different kind of harm from Defendants' failure to disclose pedophiles than the harm suffered by the public in general. However, Doe 1 has provided the affidavits of Robert Geffner, Ph.D. to fill that gap.

There has been no persuasive attack on Dr. Geffner's qualifications as a well-educated and experienced licensed psychologist, or as to the foundation for his opinions gathered from his clinical evaluation of Doe 1. Nevertheless, the order here is without prejudice to Defendants renewing a challenge to Dr. Geffner's qualifications or to the Rule 702 foundational bases for his opinions via motions in limine, which are yet to be heard. Defendants have also criticized Dr. Geffner's Addendum of April 2, 2014, (which supplements his original report of March 19, 2014) by suggesting that his opinions are stated in a manner that is not sufficiently certain. For

example, in his Addendum, Dr. Geffner uses the phrases "may have" and "is possible that" and "could have" at various places. However, in other places in his Addendum with respect to key opinions, Dr. Geffner uses the terms "likely" and "possible."

An expert opinion stated as a probability, a likelihood or even a possibility can be admissible as long as it is not mere speculation. U.S. v. Cyphers, 553 F.2d 1064, 1072 (7th Cir. 1977) (expert's opinion that hairs found on items used in a robbery "could have come from" the defendant was entitled to be admitted for whatever value the jury might give to it.); see Shumaker's Rulings on Evidence, 1st Ed., 2013, at § 15.13, p. 15-138. Dr. Geffner has opined that the Defendants' concealment of information regarding pedophiles potentially delayed Doe 1's access to services and treatment earlier in life; that earlier psychiatric care may have assisted him in avoiding or decreasing the extent of his struggle with various issues in his life, including symptoms of post-traumatic stress disorder, such as severe and persistent suicidal ideation. Finally, Dr. Geffner reported that during his clinical interview, Doe 1 recalled feeling extreme guilt and anger upon learning that other children had been abused after him, and that the Defendants continued to conceal evidence of these incidents. He reported feeling that he should have done something to protect them, such as disclosing his own abuse sooner. Dr. Geffner stated:

> Doe 1 felt that he had failed to protect them. This likely exacerbated feelings of low self-esteem and possible suicidal ideation that he has been struggling with since his own abuse. The intensity of his feelings regarding this issue was apparent during the clinical interview, as he cried several times, particularly when sharing how he felt about the church's attempt to protect the perpetrators and discredit the victims.

(See Geffner Addendum at p.2.) The feelings of shame and anxiety arising from Doe 1's feeling he had inadequately handled his own abuse,

as well as the impact of that inadequate handling on the fate of others, are harms peculiar to him and other abuse survivors which cannot be shared by members of the general public.

In summary, Doe 1 has presented substantial evidence of a concrete injury in fact in the form of special and particular damages which are sufficient to withstand Defendants' motions for summary judgment. He has created a genuine issue of fact for trial with respect to whether he has suffered harm as a result of the Defendants' concealment of information about abusive priests which is different than the harm suffered by the public at large. Conant v. Robins Kaplan Miller & Ciresi LLP, 603 N.W.2d 143, 146 (Minn. Ct. App. 1999); Riehm v. Commissioner of Public Safety, 745 N.W.2d 869, 873 (Minn. Ct. App. 2008) (citing Lujan v. Defenders of Wildlife, 504 U.S.555, 560-61 (1992)).

JBV