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1ST CIRCUIT COURT
STATE OF HAWAII
FILED

2016 APR 13 AM 10:08

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N. MIYATA

CLERK

Attorneys for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN ROE NO. 47,

Plaintiff,

vs.

ROMAN CATHOLIC CHURCH IN THE
STATE OF HAWAII; a Hawaii not
for profit corporation; JANE
DOES 1-10; DOE CORPORATIONS
1-10; DOE PARTNERSHIPS 1-10;
DOE NON-PROFIT ENTITIES 1-10;
and DOE GOVERNMENTAL ENTITIES
1-10

Defendants.

CIVIL NO.

(Non-Motor Vehicle Tort)

16-1-0673-04 JHC

COMPLAINT; SUMMONS; DEMAND FOR
JURY TRIAL

COMPLAINT

Plaintiff John Roe No. 47, a fictitious name used to protect Plaintiff's privacy interests, alleges the following against Defendant ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII:

PARTIES

- a. Plaintiff John Roe No. 47 (hereinafter referred to as "Plaintiff") is an adult male who resides in the State of Hawaii. Plaintiff was a minor and a resident of the County of Honolulu, State of Hawaii at the time of the sexual abuse alleged herein.
- b. At all times material to the Complaint, Defendant The Roman Catholic Church in The State of Hawaii (hereinafter referred to as "Diocese") was and continues to be a diocese of the Roman Catholic Church, a not for profit religious corporation, authorized to conduct business and conducting business in the State of Hawaii with its principal place of business at 1184 Bishop Street, City and County of Honolulu, State of Hawaii.
- c. Plaintiff has attempted to ascertain the names and identities of possible defendants who are presently unknown to Plaintiff. Plaintiff's efforts include reviewing records and interviewing witnesses including other potential victims.
- d. Plaintiff alleges, upon information and belief, that the conduct of other defendants, presently unknown to Plaintiff, was or may have been a proximate or legal cause of the harm that he has suffered as alleged herein.

- e. Plaintiff has satisfied the requirements of Hawaii Revised Statutes, Section 657-1.8.

FACTS

1. At all times material, Fr. Donald Graff was a Catholic priest, educated, trained, ordained, and employed by the Diocese and under its direct supervision, employ, agency, and control.
2. Plaintiff alleges, upon information and belief, Graff worked as a priest at Cathedral of Our Lady of Peace parish and/or school in the Diocese of Honolulu in approximately 1964.
3. Generally, Graff's employment duties with the Diocese included teaching and working with children. Graff was a priest at Cathedral of Our Lady of Peace and provided guidance for the spiritual and emotional needs of children, including Plaintiff, entrusted to his care.
4. Plaintiff was raised in a devout Roman Catholic family. As a result of his upbringing, Plaintiff developed great admiration, trust, reverence, and respect for the Roman Catholic Church and its agents, and came to know Graff as a person of great influence and persuasion, authority figure, priest, spiritual advisor, and/or counselor.

5. In approximately 1964, when Plaintiff was approximately 13 years old he was a student at Cathedral School and he and his family were parishioners at Cathedral of Our Lady of Peace parish. Graff, using his position of authority, trust, reverence, and control as a Roman Catholic priest, engaged in unpermitted, harmful and offensive sexual contact upon the person of Plaintiff. The sexual contact and/or acts constituted or would have constituted a criminal offense under part V of chapter 707 (Haw. Rev. Stat. Sections 707-730 (2013)).
6. Prior to Graff's sexual abuse of Plaintiff, the Diocese knew or should have known about the Graff's inappropriate interactions with children and sexual abuse of children.
7. Prior to the Graff's sexual abuse of Plaintiff, the Diocese knew or should have known that Graff was a child molester and/or knew or should have known that Graff was a danger to children.
8. Before Plaintiff was sexually abused by Graff, the Diocese knew or should have known material facts regarding Graff's sexual misconduct, impulses, and behavior, but failed to act on that knowledge thereby increasing the likelihood that Plaintiff would be harmed. The Diocese's failure to act on that knowledge also contributed to Plaintiff's

injuries and inability to: appreciate the abuse and resulting injuries sustained; or obtain help for the abuse and injuries suffered.

9. Graff's practice of sexually accessing and abusing children was known or should have been known to the Diocese.
10. The Diocese grossly negligently or recklessly believed that Graff was fit to work with children and/or that any previous problems he had were fixed and cured; that Graff would not sexually molest children and that Graff would not injure children; and/or that Graff would not hurt children.
11. The sexual abuse and exploitation of Plaintiff reflected a greater pattern of conduct by the Diocese that occurred for multiple years. At all times relevant, Plaintiff was entrusted to the Diocese's care, custody, and control while Graff was under the direct supervision, employ and control of the Diocese.
12. The Diocese engaged in a pattern and practice of fraudulent conduct in order to conceal the criminal and harmful acts of its agents and employees. The Diocese, by and through its agents, misrepresented and/or failed to present the facts of known sexual misconduct to victims, their families, students, the public and/or law enforcement authorities in furtherance of a scheme to protect predatory

priests and other clergy from criminal prosecution, to maintain or increase charitable contributions and/or avoid public scandal thereby creating and perpetuating a conspiracy of silence and/or misrepresentation.

13. By holding Graff out as a qualified priest, teacher, counselor, and/or administrator employed by the Diocese, and by undertaking the instruction and spiritual and emotional guidance of the minor Plaintiff, the Diocese entered into a special relationship with Plaintiff. As a result of Plaintiff being a minor, and by the Diocese undertaking the care and guidance of the then vulnerable Plaintiff, the Diocese held a position of empowerment over Plaintiff.
14. Further, the Diocese, by holding itself out as being able to provide a safe environment for children, solicited and/or accepted this position of empowerment.
15. The Diocese and its agents and representatives held itself out to children and their parents, including Plaintiff, as counselors and instructors on matters that were spiritual, moral, and ethical. Accordingly, Plaintiff placed trust in the Diocese so that it gained superiority and influence over Plaintiff. Defendant, by maintaining and encouraging such a relationship with Plaintiff and preventing the then

minor Plaintiff from effectively protecting herself, entered into a fiduciary relationship with Plaintiff.

16. This fiduciary relationship with Plaintiff established a duty of good faith and fair dealing and the duty to act with the highest degree of trust and confidence. This fiduciary relationship included the duty to warn, the duty to disclose, and the duty to protect children from sexual abuse and exploitation by Catholic employees whom Defendant promoted as being safe with children. The Diocese's fiduciary relationship with Plaintiff was based upon a justifiable trust by Plaintiff and superiority and influence by Defendant.
17. At all times material, by accepting custody of the then minor Plaintiff, the Diocese accepted custody *in loco parentis*, as a parent, and owed Plaintiff the duty of full disclosure of all information it had or should have had regarding history of sexual misconduct.
18. Further, the Diocese and its agents were in a specialized or superior position to receive and did receive specific information regarding misconduct by priests and other agents and employees that was of critical importance to the well-being, protection, care and treatment of innocent minor victims, including Plaintiff. This knowledge was not

otherwise readily available. The Diocese exercised its special or superior positions to assume control of said knowledge and any response thereto.

19. Plaintiff, on the other hand, was in a subordinate position of weakness, vulnerability, and inequality and lacked such knowledge. Further, the ability of Plaintiff or his family to monitor the use or misuse of the power and authority of the Diocese was compromised, inhibited or restricted by the Diocese.
20. The Diocese held its leaders and agents out as people of high morals, as possessing immense power, teaching families and children to obey these leaders and agents, teaching families and children to respect and revere these leaders and agents, soliciting youth and families to their programs, marketing to youth and families, recruiting youth and families, and holding out the people that worked in the programs as safe.
21. The Diocese owed Plaintiff a duty of reasonable care because it had superior knowledge about the risk that Graff posed to Plaintiff, the risk of abuse in general in its programs and/or the risks that its facilities posed to minor children.

22. The Diocese owed Plaintiff a duty of reasonable care because it solicited youth and parents for participation in its youth programs; encouraged youth and parents to have the youth participate in its programs; undertook custody of minor children, including Plaintiff; promoted its facilities and programs as being safe for children; held its agents, including Graff, out as safe to work with children; encouraged parents and children to spend time with its agents; and/or encouraged its agents, including Graff, to spend time with, interact with, and recruit children.
23. The Diocese breached its fiduciary duty to Plaintiff by failing to act upon or insufficiently acting upon or responding to, information obtained by virtue of its superior status, known only or secretly to it, that was indicative of a pattern of wrongful, unlawful or criminal behavior on its part.
24. The Diocese also breached its duties to Plaintiff by failing to warn Plaintiff and his family of the risk that Graff posed and the risks of child sexual abuse by clerics. It also failed to warn Plaintiff about any of the knowledge that the Diocese had about child sexual abuse in general, and in its programs.

25. The Diocese also breached its duties to Plaintiff by failing to report Graff's abuse of children to the police and law enforcement.
26. The Diocese breached this duty, as well as other duties, through inaction, manipulation, intimidation, evasion, intended deception, undue influence, and duress or otherwise, as more fully described and set forth elsewhere in this complaint, resulting in negative consequences to the welfare and well-being of Plaintiff.
27. The Diocese knew or should have known that some of the leaders and people working at Catholic institutions within the Diocese were a danger to those in its care.
28. The Diocese knew or should have known that it did not have sufficient information about whether or not its leaders and people working at Catholic institutions within the Diocese were a danger to those in its care.
29. The Diocese knew or should have known that there was a risk of child sex abuse for children participating in Catholic programs and activities within the Diocese.
30. The Diocese knew or should have known that it had numerous agents who had sexually molested children. It knew or should have known that child molesters have a high rate of recidivism. It knew or should have known that there was a

specific danger of child sex abuse for children participating in its youth programs.

31. The Diocese was grossly negligent and made grossly negligent representations to Plaintiff and his family during each and every year of Plaintiff's minority.
32. By tradition, Roman Catholics and those within their custody and control, including Plaintiff, are taught to hold religious figures in the highest esteem as earthly representatives of God, and that religious figures, unlike lay people, belong to a separate and higher state in life, which the Diocese represents to be of divine origin and which it represents, entitles it to special privileges. For these and other reasons relating to the practices of the Church, religious figures and other persons in leadership positions in the Church have traditionally occupied positions of great trust, respect and allegiance among parents and youth, including Plaintiff.
33. By placing Graff as a priest, the Diocese, through its agents, affirmatively represented to minor children and their families, including Plaintiff and his family, that Graff did not have a history of molesting children, that the Diocese did not know that Graff had a history of

molesting children, and that the Diocese did not know that Graff was a danger to children.

34. By allowing Graff to remain in active ministry, the Diocese, through its agents, made continuing affirmative representations to minor children and their families, including Plaintiff and his family, that Graff did not have a history of molesting children, that the Diocese did not know that Graff had a history of molesting children and that the Diocese did not know that Graff was a danger to children.

35. The Diocese, through its agents, made representations directly to Plaintiff and his family. The Diocese knew or should have known that the representations made to Plaintiff's parents would influence Plaintiff and the amount and type of contact that Plaintiff had with Graff, Graff's access to Plaintiff, and Graff's ability to molest Plaintiff.

36. The Diocese was in a specialized position where it had knowledge unknown to Plaintiff. The Diocese was in a position to have this knowledge because it was Graff's employer and was responsible for Graff. Plaintiff, as a child, was not in a position to have information about Graff's inappropriate tendencies towards children.

37. Had Plaintiff and/or his family known what the Diocese knew or should have known - that Graff had sexually molested children before Plaintiff and/or that Graff was a danger to children- Plaintiff would not have been sexually molested.
38. Despite having actual or constructive knowledge of Graff's pedophilic propensities and/or previous instances of molestation of other children, the Diocese concealed the danger that Graff and other offending clerics, priests, brothers, and/or consecrated members of religious communities presented by holding them out as in good standing, thus enabling offenders to retain their continued, unrestricted access to minor children.
39. As a result of his early instruction and indoctrination, Plaintiff was taught to rely upon, and did rely upon, the representations and teachings of the Diocese including, but not limited to, representations regarding clerics, priests, brothers, and/or consecrated members of religious communities in general and Graff in particular (including the representation that Graff was a priest in good standing). Plaintiff also expected and believed that the Diocese would not tolerate criminal misconduct that represented a known threat to children by clerics, priests,

brothers, and/or consecrated members of religious communities. Accordingly, even after Graff had sexually molested Plaintiff, Plaintiff assumed that she was somehow the guilty party, rather than Graff.

40. Further, as a result of that early instruction and indoctrination, Plaintiff assumed that Graff's sexual molestations were isolated occurrences and that the Diocese was unaware and uninvolved, regarding both the criminal sexual conduct and the wide-ranging efforts to conceal that criminal conduct from Plaintiff and others.

41. In approximately 2002, Defendant Diocese publicly admitted that there were 5 clerics who worked in the Diocese who had been credibly accused of sexually molesting minors. Upon information and belief the Diocese has not released these names to the public. As a result, children are at risk of being sexually molested. Plaintiff believes the Diocese is aware of more than 5 clerics who have been accused of sexual molestation of minors.

42. The sexual abuse of Plaintiff and the circumstances under which the abuse occurred caused Plaintiff to develop confusion, various coping mechanisms and symptoms of psychological disorders, including post-traumatic stress disorder, anxiety, depression, repression and

disassociation. As a result, Plaintiff formed a reasonable and rational fear that he would be disbelieved and was unable to fully perceive or know that 1) the conduct of Graff was pervasive; 2) Defendant knew or had reason to know that Graff was a pedophile prior to Plaintiff's abuse; 3) Defendant was responsible for the abuse; and 4) the injuries Plaintiff suffered were the result of the abuse. Because Plaintiff's emotional and psychological injuries at times manifested themselves in ways seemingly unconnected to the sexual abuse by Graff, Plaintiff was unable to perceive or know the existence or nature of his psychological and emotional injuries and the causal connection to the sexual abuse.

43. As a direct result of the Diocese's conduct, Plaintiff has suffered and continues to suffer from injuries including, but not limited to: great pain of mind and body; severe and permanent emotional distress; physical manifestations of emotional distress; psychological injuries, including post-traumatic stress disorder and depression; feelings of shame, embarrassment, and powerlessness; was prevented and will continue to be prevented from performing normal daily activities and obtaining the full enjoyment of life; will incur expenses for medical and psychological treatment,

therapy and counseling; and has incurred and will continue to incur loss of income and/or loss of earning capacity.

COUNT ONE

NUISANCE AND REQUEST FOR INJUNCTIVE RELIEF

44. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count.
45. Defendant continues to conspire and engage and/or has conspired and engaged in efforts to: 1) conceal from the general public the sexual assaults committed by, the identity of, and the pedophilic/ephebophilic tendencies of Graff, and Defendant's other agents, some of whom are on its list of credibly accused clerics; 2) attack the credibility of the victims of Defendant's agents; and/or 3) protect Defendant's agents from criminal prosecution for their sexual assaults against children.
46. The negligence and/or deception and concealment by Defendant was and is unlawfully annoying, hurtful, inconvenient, and/or damaging to the general public, is wrongful and/or permits injuries and/or annoys the general public in its enjoyment of its legal rights, and/or is an obstruction to the free use of property by the general public, including, but not limited to, residents in the Diocese of Honolulu and all other members of the general

public who live in communities where Defendant's credibly accused molesters live. It was and is unlawfully annoying and/or damaging, so as to interfere with the general public's comfortable enjoyment of life in that the general public cannot trust Defendant to warn parents of the presence of the current and/or former credibly accused molesters, nor to identify their current and/or former credibly accused molesters, nor to disclose said credibly accused molesters' assignment histories, nor to disclose their patterns of conduct in grooming and sexually assaulting children, all of which create an impairment of the safety of children in the neighborhoods in Hawaii and where Defendant conducted, and continues to conduct, its business.

47. The negligence and/or deception and concealment by Defendant was and continues to be injurious to Plaintiff's health as Plaintiff was sexually assaulted by Defendant's agent, Graff.

48. The negligence and/or deception and concealment by Defendant was also injurious to Plaintiff's health in that when Plaintiff finally discovered the negligence and/or deception and concealment of Defendant, Plaintiff experienced mental and emotional distress that Plaintiff

had been the victim of the Defendant's negligence and/or deception and concealment; that Plaintiff had not been able to help other minors being molested because of the negligence and/or deception and concealment; and that Plaintiff had not been able to because of the negligence and/or deception and concealment to receive timely medical treatment needed to deal with the problems Plaintiff suffered and continues to suffer as a result of the molestation.

49. Plaintiff also suffered particular and peculiar harm after learning of the Diocese's concealment of clerics credibly accused of sexually molesting minors, which continues as long as these names remain concealed. As a result of the concealment, Plaintiff has suffered and continues to suffer lessened enjoyment of life, impaired health, emotional distress, and/or physical symptoms of emotional distress. Plaintiff has also experienced depression, anxiety, and/or anger.
50. The continuing public nuisance created by Defendant was, and continues to be, the proximate cause of the injuries and damages to the general public and of Plaintiff's injuries and damages as alleged.

51. In doing the aforementioned acts, Defendant acted negligently and/or intentionally, maliciously and with conscious disregard for Plaintiff's rights.
52. As a result of the above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT TWO

GROSS NEGLIGENCE

53. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count.
54. Defendant assumed a duty to Plaintiff by:
- a. holding Graff out to the public, including Plaintiff, as a competent and trustworthy employee, representative, priest, administrator and/or counselor of high morals;
 - b. holding its facilities and school out as a safe environment for children;
 - c. taking and inviting children into its facilities;
 - d. entrusting children to the care of Graff during extracurricular activities; and
 - e. fostering environments in which Plaintiff was inhibited from reporting the sexual abuses by Graff.
55. Defendant had a duty to exercise care in supervising Graff in his assignments and failed to prevent the injuries

sustained by Plaintiff as a result of the foreseeable misconduct of its employee, Graff.

56. Defendant breached this duty by exposing Plaintiff to Graff, an unfit agent with dangerous and exploitive propensities.
57. Defendant was grossly negligent in deeming Graff a fit agent for ministry, teaching, and employment and in continuing to employ Graff in a position of trust and authority as a priest, teacher, counselor, and/or administrator without proper or adequate supervision, thereby providing him the opportunity to commit the wrongful acts against Plaintiff as described herein.
58. The aforesaid occurrences were proximately caused by the willful, wanton, reckless, and grossly negligent conduct of Defendant, its agents, servants and/or employees, in failing to properly and adequately supervise the conduct of Graff as it related to the Plaintiff, other young children, other parishioners and/or other students.
59. As a result of the Defendant's grossly negligent retention and inadequate supervision of Graff, Plaintiff was sexually abused by Graff when Plaintiff was a minor.

60. As a result of Defendant's grossly negligent conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT THREE

GROSSLY NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

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

62. Defendant's conduct was extreme and outrageous.

63. A reasonable person would not expect or tolerate Defendant placing an individual who was known and/or should have been known to Defendant as a child molester, in contact with minors. A reasonable person would not expect or tolerate Defendant allowing Graff to have unsupervised contact with minors and failing to supervise or prevent Graff from committing wrongful sexual acts with minors, including Plaintiff.

64. Defendant's conduct was grossly negligent and done for the purpose of causing with a substantial certainty or reckless or conscious disregard of the likelihood that Plaintiff would suffer the injuries and damages described herein.

65. As a direct and proximate result of the severe emotional distress, Plaintiff has suffered emotional, psychological and physical injury.

COUNT FOUR

GROSSLY NEGLIGENT MISREPRESENTATION

66. Plaintiff incorporates all paragraphs of the Complaint as if fully set forth under this count.
67. Defendant, through its agents, represented to Plaintiff and his family that Graff did not have a history of molesting children and did not pose a danger to children.
68. Graff did have a history of molesting children and was dangerous to children.
69. Defendant's representations to Plaintiff, Plaintiff's family and others regarding Graff were false and Defendant was grossly negligent in its care and/or competence in providing said representations.
70. As a direct and proximate result of Defendant's above-described conduct, Plaintiff has suffered the injuries and damages described herein.

COUNT FIVE

PUNITIVE DAMAGES

71. Plaintiff incorporates all paragraphs of this Complaint as if fully set forth under this count.
72. The conduct of Defendant constituted gross negligence, intentional, willful and wanton, or malicious misconduct or was conducted with such a want of care as to constitute a

conscious indifference to the rights of others including Plaintiff warranting the imposition of punitive damages.

WHEREFORE, Plaintiff prays that this Court issue an order enjoining the Roman Catholic Church in the State of Hawaii from further concealing the names of all clerics credibly accused of child molestation and requiring that the Roman Catholic Church in the State of Hawaii publicly release the names of all credibly accused child molesting clerics, each such cleric's history of abuse, each such cleric's pattern of grooming and sexual behavior, and his last known address. This includes the release of names of all clerics accused of child molestation in the Roman Catholic Church in the State of Hawaii, those not on Defendant's 2002 list of credibly accused clerics, and clerics that have been accused of child molestation since 2002. This also includes the release of the Roman Catholic Church in the State of Hawaii's documentation of and/or regarding the credibly accused clerics.

WHEREFORE, Plaintiff prays that judgment be entered in his favor, and against Defendant, for general, special, and punitive damages, together with costs of suit, attorney's fees, pre- and post-judgment interest, and other relief pursuant to Rule 54 of the Hawaii Rules of Civil Procedure.

DATED: April 12, 2016. Honolulu, Hawaii.

A handwritten signature in black ink, appearing to read 'M. F. Gallagher', is written over a solid horizontal line.

Mark Gallagher, Esq.
Attorney for Plaintiff

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

JOHN ROE NO. 47,

Plaintiff,

vs.

THE ROMAN CATHOLIC CHURCH IN
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GOVERNMENTAL ENTITIES 1-10

Defendants.

CIVIL NO.
(Non-Motor Vehicle Tort)

SUMMONS

SUMMONS

STATE OF HAWAI`I

To the above-named Defendant:

You are hereby summoned and required to file with the court and serve upon THE LAW OFFICE OF MARK GALLAGHER, Plaintiff's attorney, whose address is 66 Kaiholu Place, Kailua, Hawai'i 96734, an answer to the Complaint which is herewith served upon you, within twenty (20) days after service of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: April __, 2016. Honolulu, Hawai'i.

APR 13 2016

N.MIYATA

Clerk of the above-entitled court



In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.

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STATE OF HAWAI`I

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Defendants.

CIVIL NO.
(Non-Motor Vehicle Tort)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so
triable.

DATED: April 12, 2016. Honolulu, Hawai'i.



Mark F. Gallagher, Esq.
Attorney for Plaintiff