

ENDORSED  
FILED  
Superior Court of California  
County of San Francisco

MAR 20 2012

CLERK OF THE COURT  
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6 SUPERIOR COURT OF THE STATE OF CALIFORNIA

7 For the County of San Francisco

8 Michelle S., an individual,  
9 Plaintiff,

10 v.

11 Roman Catholic Bishop of San Jose,  
12 a California corporation; Sacred Heart  
13 Parish; Sacred Heart School; Doe 4,  
14 a California corporation; Roman  
15 Catholic Bishop of Fresno; Diocese of  
16 Fresno Education Corporation, a  
17 California corporation; Father Don  
18 Flickinger, an individual; and Does 8  
19 through 100, Inclusive.

20 Defendants.

Case No. CGC-11-515938

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND INJUNCTIVE  
RELIEF FOR:

1. PUBLIC NUISANCE
2. NEGLIGENCE
3. NEGLIGENT SUPERVISION/  
FAILURE TO WARN;
4. NEGLIGENT  
HIRING/RETENTION
5. FRAUD;
6. FIDUCIARY/CONFIDENTIAL  
RELATIONSHIP FRAUD AND  
CONSPIRACY;
7. BREACH OF FIDUCIARY  
DUTY;
8. NEGLIGENT FAILURE TO  
WARN, TRAIN, OR EDUCATE  
PLAINTIFF;
9. INTENTIONAL INFLICTION  
OF EMOTIONAL DISTRESS;
10. NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS;
11. FRAUD AND DECEIT;
12. PREMISES LIABILITY.
13. CHILDHOOD SEXUAL  
ABUSE;
14. SEXUAL BATTERY

JURY TRIAL DEMANDED

BY FAX

25  
26 Based upon information and belief available at the time of the filing of this  
27 First Amended Complaint, Plaintiff Michelle S. makes the following allegations:  
28

**PARTIES**

1  
2 1. Plaintiff is a twenty-six-year-old adult female. Plaintiff was a minor residing in  
3 the county of Santa Clara, and was approximately 7 years-old, at the time of the  
4 sexual abuse alleged herein.

5 2. Defendant DOE 1/Roman Catholic Bishop of San Jose (“Defendant San Jose  
6 Bishop”) is a corporation sole authorized to conduct business and conducting  
7 business in the State of California, with its principal place of business in Santa Clara  
8 County during relevant dates herein. Defendant San Jose Bishop had responsibility  
9 for Roman Catholic Church operations in Santa Clara County, California during  
10 relevant dates herein. Defendant San Jose Bishop is the leader of and/or the  
11 corporate identity of the Roman Catholic Diocese in which the sexual abuse  
12 occurred.

13 2.1 Defendant DOE 2/Sacred Heart Parish (“Defendant Parish”) is a Roman  
14 Catholic parish located in the city of Saratoga, County of Santa Clara, California.  
15 Defendant Parish is the parish where Plaintiff was a parishioner during the period of  
16 wrongful conduct.

17 2.2 Defendant DOE 3/Sacred Heart School (“Defendant School”) is a Roman  
18 Catholic school located in the city of Saratoga, County of Santa Clara, California.  
19 Defendant school is the school where Plaintiff was a student during the period of  
20 wrongful conduct. Defendant San Jose Bishop, Defendant School and Defendant  
21 Parish are sometimes collectively referred to as the “San Jose Defendants.”

22 2.3 Defendant DOE 4 (“Defendant Archbishop”) is a corporation sole authorized  
23 to conduct business and conducting business in the State of California, with its  
24 principal place of business in San Francisco County, California, and doing business  
25 in both San Francisco County and Santa Clara County during relevant dates herein.  
26 Defendant Archbishop is the leader of and/or the corporate identity of the Roman  
27 Catholic Archdiocese in which the Perpetrator was assigned before he abused  
28 Plaintiff, whose agents learned of the threat posed by the Perpetrator before the

1 abuse of Plaintiff, and in which the Perpetrator was assigned, performing his  
2 ministry, and allowed contact with children, until recently. Defendant Archbishop  
3 thus could have prevented Plaintiff's abuse, and the abuse of countless other  
4 children by the Perpetrator.

5 2.4 Defendant DOE 5/Roman Catholic Bishop of Fresno ("Defendant Fresno  
6 Bishop") is a corporation sole authorized to conduct business and conducting  
7 business in the State of California, with its principal place of business in Fresno  
8 County during relevant dates herein. While the Perpetrator was assigned in  
9 Defendant Fresno Bishop's Diocese in the late 1960s, and long before the  
10 Perpetrator sexually assaulted Plaintiff, Defendant Fresno Bishop knew or should  
11 have known of the danger the Perpetrator posed to children. Defendant Fresno  
12 Bishop thus could have prevented Plaintiff's abuse. Defendant Fresno Bishop is the  
13 leader and/or the corporate identity of the Roman Catholic Diocese in which the  
14 Perpetrator was assigned and whose agents learned of the threat posed by the  
15 Perpetrator long before the abuse of Plaintiff. Defendant Fresno Bishop thus could  
16 have prevented Plaintiff's abuse, and the abuse of countless other children by the  
17 Perpetrator.

18 2.5 Defendant DOE 6/Roman Catholic Education Corporation of Fresno  
19 ("Education Corporation") is a California corporation authorized to conduct business  
20 and conducting business in the State of California, with its principal place of  
21 business in Fresno County, California, and doing business in Fresno County during  
22 relevant dates herein. Education Corporation had responsibility for Roman Catholic  
23 school operations in Fresno County, California during relevant dates herein,  
24 including the school where Flickinger was assigned in the late 1960s, San Joaquin  
25 Memorial High School ("SJMHS"). While Flickinger was assigned to SJMHS, he  
26 repeatedly engaged in conduct with students which Education Corporation knew or  
27 should have known evidenced the danger Fr. Flickinger posed to children.  
28 Defendant Education Corporation thus could have prevented Plaintiff's abuse.

1 Defendant Fresno Bishop and Defendant Education Corporation are sometimes  
2 collectively referred to as the "Fresno Defendants."

3 2.6 Defendant DOE 7/Fr. Don Flickinger, the Perpetrator, was an individual residing  
4 and/or doing business in the City of Saratoga and County of Santa Clara, California,  
5 during the period of abuse of Plaintiff, and was and/or is a Roman Catholic priest,  
6 member, employee, agent and/or servant of Defendant San Jose Bishop and/or  
7 Defendant Parish and/or Defendant School and/or Defendant Archbishop and/or  
8 Defendant Fresno Bishop and/or Defendant Education Corporation and/or Does 8-100.  
9 During the abuse, Fr. Flickinger was assigned, or in residence, or doing supply work,  
10 or volunteering, or visiting at Defendant Parish and/or Defendant School, and was  
11 under the direct supervision, employ and control of the Defendant San Jose Bishop  
12 and/or Defendant Parish and/or Defendant School and/or Defendant Archbishop and/or  
13 Defendant Fresno Bishop and/or Defendant Education Corporation and/or Does 8-100.  
14 Until recently, Fr. Flickinger was assigned and/or in residence at St. Paul's Catholic  
15 Church and Elementary School in the Archdiocese of San Francisco. The Perpetrator's  
16 current assignment and/or residence is known only to Defendants.

17 3. Defendant Does 8 through 100, inclusive, are individuals and/or business or  
18 corporate entities incorporated in and/or doing business in California whose true names  
19 and capacities are unknown to Plaintiff who therefore sues such defendants by such  
20 fictitious names, and who will amend the First Amended Complaint to show the true  
21 names and capacities of each such Doe defendant when ascertained. Each such  
22 Defendant Doe is legally responsible in some manner for the events, happenings  
23 and/or tortious and unlawful conduct that caused the injuries and damages alleged in  
24 this First Amended Complaint.

25 4. Fr. Flickinger and/or each Defendant were and/or are the agent, servant and/or  
26 employee of Defendant San Jose Bishop and/or Defendant Parish and/or Defendant  
27 School and/or Defendant Archbishop and/or Defendant Fresno Bishop and/or  
28 Defendant Education Corporation and/or Does 8-100. Fr. Flickinger and/or each

1 Defendant was acting within the course and scope of his, her or its authority as an  
2 agent, servant and/or employee of Fr. Flickinger and/or other Defendants. Fr.  
3 Flickinger and/or Defendant San Jose Bishop and/or Defendant Parish and/or  
4 Defendant School and/or Defendant Archbishop and/or Defendant Fresno Bishop  
5 and/or Defendant Education Corporation and/or Does 8-100, and each of them, are  
6 individuals, corporations, partnerships and other entities which engaged in, joined in  
7 and conspired with the other wrongdoers in carrying out the tortious and unlawful  
8 activities described in this First Amended Complaint, and Fr. Flickinger and/or each  
9 Defendant ratified the acts of Fr. Flickinger and/or Defendant San Jose Bishop and/or  
10 Defendant Parish and/or Defendant School and/or Defendant Archbishop and/or  
11 Defendant Fresno Bishop and/or Defendant Education Corporation and/or Does 8-100.

12  
13 **BACKGROUND FACTS APPLICABLE TO ALL COUNTS**

14 5. Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents  
15 committed acts of childhood sexual abuse at Sacred Heart and at various locations  
16 around California and elsewhere before, during, and after the time Plaintiff attended  
17 Sacred Heart. Defendants' practice of concealing the identities, propensities, and  
18 current assignments and/or residences of these perpetrators has enabled and  
19 empowered such men to sexually assault and/or continue to place at risk countless  
20 children around the various locations in California where Defendants conduct their  
21 business. Defendants have greatly increased the danger to children by continuing to  
22 transfer perpetrators such as Fr. Flickinger, after allegations of abuse arise, from one  
23 diocese to another into unsuspecting parishes and communities. Additionally, an  
24 unknown number of Defendants' former pedophilic and/or ephebophilic agents, whose  
25 propensities Defendants have been aware of for years but have disclosed to no one,  
26 continue to sexually assault and/or place at risk countless children at locations where  
27 Defendants' former agents now reside. Fr. Flickinger's history, as set forth below, is  
28 but one example of the threat to today's children posed both by such men, and by

1 Defendants' continuing practices in managing them.

2  
3 **Fr. Flickinger is Ordained in the Diocese of Monterey-Fresno in 1964**

4 6. Fr. Flickinger was ordained in 1964. One of his first assignments was as  
5 chaplain at San Joaquin Memorial High School ("SJMHS") in Fresno. Soon thereafter  
6 Flickinger began openly engaging in sexually motivated misconduct that was  
7 recognized by numerous boys at SJMHS as inappropriate, but was ignored by agents  
8 of the Fresno Defendants. Those agents not only observed Fr. Flickinger's conduct but  
9 allowed it to continue. Among other things, Flickinger regularly and openly  
10 inappropriately touched boys, removed select boys from classes for private meetings  
11 in his office, asked them sexual questions, and often attempted to give his misconduct  
12 the false appearance of appropriateness. For instance, one of his ploys was to attempt  
13 to cloak his sexual questions in purported penitential communications by inducing boys  
14 to agree to let him hear their confessions outside the confessional. In another such  
15 ploy he sometimes inflicted pain on the boys he touched inappropriately by grabbing  
16 them with enough force to cause pain, thus allowing Flickinger to sexually gratify  
17 himself but make it appear as if he was somehow acting masculine or tough rather than  
18 as a sexual predator.

19 Flickinger engaged in such conduct at, among other places, SJMHS and a  
20 summer camp at Bass Lake, and continued this predatory behavior throughout his  
21 career as a priest. Flickinger's conduct at SJMHS was so frequent and well known that  
22 the boys at SJMHS openly discussed the fact that Flickinger was attracted to boys,  
23 warned each other to watch out for him, and gave Flickinger nicknames such "Fr.  
24 Fuckinger" and "Fr. Faggot."

25 Witness #1, a member of the SJMHS Class of 1968, met Flickinger while an  
26 underclassman. Flickinger would take the boy out of class to Flickinger's office and ask  
27 him sexual questions. Flickinger also constantly touched Witness #1, squeezing his  
28 hand with such force the boy would bend over in pain, grabbing the boy's shoulders,

1 and digging his fingers into the boy's upper inner thigh with such pressure Witness #1  
2 had to flex his quadriceps to prevent Flickinger from digging in any deeper. Flickinger  
3 also engaged in such conduct with members of the boys' swim team while serving as  
4 the team chaplain. Another member of the Class of 1968, Witness #8, considered  
5 Flickinger too "touchy-feely" with boys at SJMHS, and talked with other members of the  
6 swim team who agreed it was strange how much time Flickinger spent in the team's  
7 locker room.

8 At the end of Witness #1's sophomore year in 1966, Flickinger invited the boy  
9 to work at a camp at Bass Lake known as Camp Santa Teresita. The camp was run  
10 by the Roman Catholic Church for grade school age boys and girls. Unfortunately,  
11 Flickinger used the camp for his own sexual gratification as he invited boys from  
12 SJMHS to volunteer at the camp, and the inappropriate touching and sexual questions  
13 continued and grew worse. During the camp Flickinger seized on opportunities to  
14 isolate Witness #1, offering to teach the boy to drive, taking the boy out to dinner, or  
15 inducing the boy to enter Flickinger's residence at night.

16 Flickinger's conduct with the boy in his camp residence occurred at least once  
17 a week around 9:00 p.m., and paralleled his conduct during the incidents at SJMHS.  
18 Specifically, Flickinger sometimes unilaterally made the meetings confessional. During  
19 others he did not. But almost inevitably, and regardless of the context he  
20 manufactured, Flickinger would question Witness #1 about masturbation, a subject the  
21 boy had no interest in discussing and that Flickinger had no legitimate basis about  
22 which to ask, and was for Flickinger's own sexual gratification. All of this took place  
23 while Flickinger touched the boy inappropriately.

24 The following school year, 1966-67, another SJMHS student, Witness #2, began  
25 avoiding Flickinger after the priest repeatedly sat or stood next to the boy at school  
26 whenever the opportunity arose, and then grabbed the boy's upper thighs. On one  
27 such occasion Flickinger said "wow, no wonder you're such a good football player,  
28 you've got legs like this." Upon standing up Flickinger would hug Witness #2 so closely

1 and for so long it made the boy uncomfortable. Like so many other SJMHS students,  
2 Flickinger called Witness #2 into his office on more than one occasion and asked him  
3 sexual questions. Once, after a student government meeting, Flickinger induced the  
4 boy to come to his office. Fearing further inappropriate touching and sexual questions  
5 by Flickinger, Witness #2 claimed he could not meet with Flickinger because he had  
6 to go home immediately. Despite this, Flickinger spent the next thirty minutes  
7 questioning Witness #2 about his relationships with girls, the fact he had heard Witness  
8 #2 was dating a girl, and about whether he was sexually active with the girl. Flickinger's  
9 sexually predatory conduct toward the boys at SJMHS was so open and well known  
10 that other boys warned Witness #2 to stay away from Flickinger.

11 While working during the summer with Flickinger at Camp Santa Teresita,  
12 Flickinger questioned Witness #2 about masturbation, again asked the boy about his  
13 relationship with a girl, and then returned to questioning the boy about masturbation.  
14 Witness #2 watched Flickinger calling the boy's classmates into Flickinger's office at  
15 the camp that summer, one after another, for similar treatment.

16 During the junior and senior years of Witness #3, Class of 1969, Flickinger took  
17 the boy out of class to his office so often that Witness #3 and his friends joked about  
18 it. At the start of these incidents Flickinger would first grip Witness #3's hand with such  
19 force the boy's knees almost buckled. Once they sat down Flickinger would place his  
20 hand on the boy's shoulder, upper arm, or lower thigh, sometimes squeezing the boy's  
21 knee while questioning him about whether he masturbated. During these incidents  
22 Flickinger often attempted to create a false appearance of propriety for his questions  
23 by asking the boy if he wanted Flickinger to hear his confession. Witness #3 never  
24 asked Flickinger to hear his confession or brought up masturbation, but Flickinger  
25 always raised the subject. When Flickinger finished his questions he would hug the boy  
26 and stare at him for so long it made the boy uncomfortable. Later, when Witness #3  
27 had a girlfriend, Flickinger questioned the boy about sex and arousal, as well as about  
28 masturbation. Similar incidents also took place while Witness #3 was at the summer



1 camp with Flickinger before the boy's senior year.

2 Flickinger also called Witness #4, Class of 1968, to his office and asked the boy  
3 personal questions about sex and masturbation. Because of the frequency and nature  
4 of Flickinger's conduct, Witness #4 and his friends began calling Flickinger "Fr.  
5 Fuckinger." After observing and being subjected to Flickinger's inappropriate conduct  
6 at SJMHS, Witness #4 soon concluded it was only a matter of time before Flickinger  
7 was arrested for child molestation.

8 Flickinger often put his arm around Witness #5, Class of 1968, and tried to  
9 induce the boy to come to Flickinger's office. The boy refused as he was disturbed by  
10 his observations of the frequency and the ways in which Flickinger touched other boys  
11 at SJMHS, and thought Flickinger's behavior was bizarre.

12 Flickinger called Witness #6, Class of 1968, into his office and asked the boy if  
13 he masturbated. When Witness #6 said he never did and did not discuss his sexual  
14 conduct, Flickinger appeared to lose interest and ended the conversation. Witness #6  
15 was aware of his classmates making comments that suggested Flickinger was  
16 someone to watch out for because he might be sexually attracted to male students.

17 Despite years of open and obvious inappropriate conduct by Flickinger, the  
18 SJMHS faculty and staff – all agents of the Fresno Defendants – continued to allow the  
19 priest to enter freshmen classrooms, among others, and hand-pick boys, such as  
20 Witness #7 (Class of 1971), to take to his office, claiming they needed "counseling" or  
21 "spiritual guidance." Other times Flickinger would say to Witness #7, "I'm the Chaplain,  
22 I need to get to know you," and then order the boy to his office. The faculty and staff  
23 allowed Flickinger to engage in such conduct throughout Witness #7's freshman year  
24 despite the fact it was clear Flickinger was not pulling every boy out of class, but was  
25 targeting only those boys he found most attractive and/or believed would be vulnerable.

26 Flickinger also continued to exploit penitential communications in order to cloak  
27 his inappropriate intentions and conduct. Specifically, the first thing Flickinger would  
28 ask Witness #7, once he had the boy in his office, was, "When was the last time you

1 went to confession?" Each time Flickinger ordered Witness #7 to his office, he ordered  
2 Witness #7 to give his confession, a fact that made Witness #7 very uncomfortable as  
3 it was the first time he ever gave his confession outside the confessional. At the start  
4 of each incident Flickinger would say, "If you don't mind, I'm going to put my hand on  
5 your knee so I can really focus on what you're telling me." Witness #7 would then  
6 dutifully confess, and as soon as Witness #7 mentioned masturbation, Flickinger would  
7 ask, "What do you think about during masturbation? Tell me more." Like Witness #10,  
8 also a member of the Class of 1971, Flickinger's sexual questions made Witness #7  
9 very uncomfortable, and led him to conclude Flickinger was questioning boys to  
10 determine how vulnerable they were to further abuse. Flickinger appeared always to  
11 be looking for excuses to redirect his conversations with boys at SJMHS to sex. For  
12 instance, after noting that Witness #12, Class of 1969, chewed his fingernails,  
13 Flickinger used this as an excuse to ask if it was a sign of the boy masturbating.

14         Additionally, in what may have been one of Fr. Flickinger's earliest attempts at  
15 such a ploy, Flickinger took a request from a student for guidance regarding what  
16 school a student should attend and attempted to use it to isolate and sexually abuse  
17 the boy. Specifically, during Witness #7's senior year he asked Flickinger to assist him  
18 in gaining admission to Santa Clara. Flickinger, however, told the boy they needed to  
19 meet in person so that he could talk to Witness #7 and get a better feel for Witness #7's  
20 character. As with Plaintiff over thirty years later, Flickinger wanted to pick Witness #7  
21 up at his parent's house and take the boy to lunch. However, having learned from his  
22 past experiences with Flickinger, Witness #7 refused. Witness #7 also was afraid his  
23 friends, who referred to Flickinger as "Father Fag" as a result of Flickinger's conduct  
24 toward the boys at SJMHS, would see Flickinger pick him up and tease Witness #7  
25 about going on a date with Flickinger.

26         Flickinger traumatized Witness #9, Class of 1968, with questions about  
27 masturbation during the boy's junior or senior years at SJMHS. These incidents took  
28 place at various locations around the school, and at least once during an open (no

1 screen was present) face-to-face confession Flickinger induced the boy to give outside  
2 the confessional. During this event, Flickinger wanted information about the boy's  
3 masturbatory habits that included questions concerning frequency and visual fantasies.  
4 This incident had a tremendous emotional effect that still continues today. Equally  
5 troubling was the frequency with which Flickinger openly touched the boy's arms,  
6 shoulders, and upper thighs, doing so whether Witness #9 was standing or sitting.  
7 Most disturbing to Witness #9 is the fact that an identifiable trigger elicited a flash  
8 image where he is alone with Flickinger who is lying on a bed or a cot that is covered  
9 with an olive-green blanket and is naked. The surroundings in the image make Witness  
10 #9 think this occurred in a cabin at Camp Teresita, Bass Lake where the witness  
11 worked during the summer of 1968. Witness #9 is unable to remember what if anything  
12 happened or why such a circumstance arose, nor why such an image would be  
13 triggered in his mind.

14 Witness #10, a student from the Class of 1969 and an ardent supporter of  
15 Flickinger, acknowledges that Flickinger touched him like many of the boys described  
16 above, but attributes this behavior to Flickinger reaching out for companionship.  
17 Witness #10 admits Flickinger's behavior was unusual because, at that time, it was  
18 socially unacceptable for males to touch each other.

19 It was so apparent to another member of the Class of 1971, Witness #11, that  
20 Flickinger's behavior with SJMHS boys was inappropriate that on several occasion  
21 Witness #11 considered reporting Flickinger to Defendant Fresno Bishop. Witness #11  
22 was particularly disturbed by Flickinger's inappropriate behavior that began when  
23 Witness #11 was fourteen at SJMHS and continued – unabated by the Fresno  
24 Defendants' agents – until Witness #11 was around sixteen. During those years  
25 Flickinger repeatedly ordered Witness #11 to Flickinger's office, and asked Witness #11  
26 if he masturbated, and what he thought about when he masturbated. Witness #11  
27 understood sex to be something they were not supposed to discuss and, as a result,  
28 always tried to change the subject when Flickinger brought it up, or to avoid it

1 altogether. Witness #11's efforts failed as Flickinger always redirected their  
2 conversations to sex. At the end of these discussions Flickinger would try to hug  
3 Witness #11, and induced the boy to submit by telling Witness #11 it was ok for men  
4 to hug. Witness #11 believes Flickinger's sole motivation for ordering Witness #11 to  
5 his office was to discuss sex and masturbation. Flickinger's conduct was so frequent  
6 and so extreme that Witness #11 and his friends concluded Flickinger was sexually  
7 attracted to boys.

8 When Witness #13, Class of 1970, was fifteen, Flickinger came to his house  
9 when the boy's parents were gone and began asking the boy whether he masturbated.  
10 Witness #13 was so surprised and overwhelmed he shut down and did not answer. He  
11 also wondered why Flickinger was asking him about masturbation, and what business  
12 a priest had asking such questions. Even at his young age, Witness #13 concluded the  
13 questions were inappropriate, and Flickinger eventually stopped asking when Witness  
14 #13 did not respond.

15 Flickinger also used to call Witness #14, another member of the Class of 1970,  
16 into his office and ask whether the boy was involved in sexual relations and whether he  
17 was masturbating. On one occasion Flickinger placed his hand on the boy's knee,  
18 making Witness #14 feel very uncomfortable, and prompting the boy to instinctively and  
19 defensively tense up and clench his fist. This reaction prompted Flickinger to stop, and  
20 to never call the boy into his office again. Flickinger's openly inappropriate conduct with  
21 boys at the school prompted Witness #14 and his friends to refer to Flickinger as "Fr.  
22 Fag."

23 After Witness #14 graduated from SJMHS he enrolled at Santa Clara University  
24 in what was then part of the Archdiocese of San Francisco. While a student, Witness  
25 #14 began volunteering at Defendant Archbishop's youth outreach program. In or  
26 around 1972, when Witness #14 was approximately nineteen years old, he  
27 inadvertently placed Defendant Archbishop's agents on notice that Flickinger had been  
28 accused of engaging in inappropriate sexual conduct with boys at SJMHS. Specifically,

1 Flickinger's name was mentioned during a volunteer staff meeting and Witness #14  
2 openly referred to Flickinger as "Fr. Fag," explaining that was the nickname his friends  
3 at SJMHS had given Flickinger. Within a day of making this comment to the staff,  
4 Flickinger appeared and confronted Witness #14 with a man who claimed to be a  
5 private investigator. Flickinger then demanded that Witness #14 sign a document  
6 stating that Flickinger had never made any sexual advances towards Witness #14, and  
7 threatened that if Witness #14 did not sign, he (Flickinger) would have Witness #14  
8 expelled from Santa Clara and would either sue him or have him criminally prosecuted.  
9 Feeling threatened, humiliated, and scared of being expelled or worse, Witness #14  
10 submitted to the priest's demands and signed. Flickinger told Witness #14 the letter  
11 would go into his (Flickinger's) personnel file. Most important, at least two priests from  
12 the Archdiocese subsequently learned of the incident and apologized to Witness #14.  
13 However, Defendant Archbishop took no further action and Flickinger continued his  
14 ministry.

15 Flickinger also exploited the relationships he developed with students at SJMHS,  
16 later preying upon at least one child of a SJMHS graduate with whom Flickinger had  
17 maintained a relationship. Specifically, the son of a member of the Class of 1966  
18 reported an incident of inappropriate conduct by Flickinger, only to have his mother and  
19 aunt dismiss the boy's report and support Flickinger.

20  
21 **Defendants Assign Flickinger to Defendant Parish/Sacred Heart in Saratoga**  
22 **Where He Continues to Abuse Children, Including Plaintiff**

23 In the early 1990s Defendants transferred Flickinger to Sacred Heart, where  
24 Defendants allowed him to work with and have physical contact with even younger  
25 children, including preparing them for their first communion and hearing their  
26 confessions. With no warning to the parishioners, and having never been reported to  
27 law enforcement, criminally prosecuted, or forced to register as a sex offender,  
28 Flickinger was unidentifiable to the parishioners as a predator. Instead, he was free to

1 use the power, respect and authority he enjoyed as a Roman Catholic priest to continue  
2 his exploitation of children. It was at this location that Flickinger abused Plaintiff  
3 Michelle S. during both church and school hours.

4 Plaintiff was raised in a devout Roman Catholic Family, and attended Sacred  
5 Heart for school from 1<sup>st</sup> through 8<sup>th</sup> grade. Sacred Heart also was her home parish,  
6 attended by Plaintiff and her family for mass on a weekly basis until Plaintiff was old  
7 enough to choose not to attend such services. During the period of Flickinger's abuse  
8 of Plaintiff, among other things, Defendants allowed him to openly and inappropriately  
9 touch children on the grounds of the school and parish, including in the church itself.  
10 The touching included long massages of the child's chest and back, and involved  
11 Flickinger exploiting his far superior size and strength to restrain the child while he  
12 engaged in this conduct. Flickinger used the position of trust he enjoyed to groom  
13 Plaintiff for abuse by showering her with praise, helping her prepare for her first  
14 communion, and repeatedly publicly touching her in an affectionate way. As a child in  
15 a large family Plaintiff was starved for such direct attention and affection from a  
16 paternal figure. And as a priest, Flickinger was the ultimate paternal figure and the  
17 voice of God in Plaintiff's eyes. Flickinger exploited this revered status first to create  
18 in Plaintiff an emotional dependency on him, and then to sexually abuse Plaintiff.

19 One mother at the parish, Witness #25, recalls observing Flickinger approach  
20 a child from behind, stroke the little girl's hair, and give her a kiss on the head that  
21 lasted so long the mother was disturbed to the point she "got the chills," and was  
22 compelled to tell Flickinger to leave her daughter alone and to stay away from the child.  
23 In other instances Defendants allowed Flickinger to hold a child in his lap, restraining  
24 the child from leaving while pulling her against his leg and onto his erection.  
25 Flickinger's conduct was so brazen that it was common knowledge amongst some of  
26 the mothers at the parish that children should be kept away from him, prompting some  
27 of them to complain to the school principal. As a result, Defendants were forced to  
28 transfer him again. Unfortunately, Defendants did so without any warning to his new

1 community.

2 **Defendants Transfer Flickinger to St. Frances Cabrini where he Continues to**  
3 **Abuse Children**

4 In the 1990s Flickinger was assigned to St. Frances Cabrini Parish and School  
5 ("Cabrini") in what had been part of the Archdiocese of San Francisco but was now in  
6 the Diocese of San Jose. At Cabrini Fr. Flickinger continued his decades of childhood  
7 sexual abuse with little, if any, objections from the San Jose Defendants' agents,  
8 despite the fact they were observing the same if not worse inappropriate conduct that  
9 Flickinger had openly engaged in since the 1960s. Once again, the children who were  
10 subjected to or observed this conduct recognized it as disturbing and inappropriate,  
11 while Defendants' agents allowed such conduct to continue. For instance, Witness  
12 #15, a former student at Cabrini, quickly concluded Flickinger was "overly friendly," "too  
13 huggy," and, as a result, "kind of creepy." Witness #15 was never comfortable with the  
14 priest. Witness #15's mother, Witness #16, recalls that her children left whenever Fr.  
15 Flickinger appeared at their home. As a result of her observations of Flickinger's  
16 conduct, Witness #16 did not allow her children to be alone with Flickinger.

17 Witness #17's sons served as altar boys for Flickinger, and felt that Flickinger  
18 was strange. Flickinger often came by her house when her children were home alone,  
19 and Witness #17 was so disturbed by Flickinger's behavior that she told her children  
20 never to let him in. Flickinger also tried to convince her to let him take at least one of  
21 them on an overnight trip to visit an out of state college, but Witness #17 refused. She  
22 also refused to allow him to be alone with her children in a variety of other  
23 circumstances, and was hypervigilant when she could not prevent it. For instance,  
24 when her boys served as altar boys with Flickinger at Cabrini, Witness #17 would count  
25 the seconds they were alone in the sacristy with Flickinger.

26 Flickinger's conduct often made Witness #18 uncomfortable. Witness #18 was  
27 a student at Cabrini and one of Flickinger's altar boys. Flickinger exploited the boy's  
28 status as a child of a devout Roman Catholic mother in a single-parent family with no

1 paternal figure. The incidents with Flickinger most often occurred when the boy's  
2 mother was away and he was most vulnerable. Witness #19, the boy's mother, had  
3 granted Flickinger permission to visit the boy while she was gone. On these occasions,  
4 much as he did with boys from SJMHS in Fresno, Flickinger would sit the boy down,  
5 place his hand on the boy's knee, and begin asking the boy questions about whether  
6 his sexual organs worked, and about the boy masturbating. Throughout these incidents  
7 Flickinger was constantly touching the boy, and at their conclusion Flickinger gave the  
8 boy long, exaggerated hugs that made Witness #18 very uncomfortable. Flickinger  
9 subjected the boy to similar conduct – long exaggerated hugs – in the back room at  
10 Cabrini where Flickinger and the altar boys disrobed after performing mass. Flickinger  
11 also took the boy on a trip to visit a college outside of California, and on at least one  
12 occasion took him upstairs to a private area in Cabrini where Flickinger sometimes took  
13 other boys. The San Jose Defendants allowed this conduct to occur despite the fact  
14 it was forbidden by the San Jose Defendants.

15 Flickinger took another boy from Cabrini, Witness #20, out to a lunch that  
16 purportedly was to counsel the boy regarding possible schools to attend, but instead  
17 was for Flickinger's own sexual gratification. Rather than counsel the boy regarding  
18 schools, Flickinger spent much of the lunch talking about the physical appearances of  
19 Witness #20 and of another boy from Cabrini, obsessing to the point that Witness #20  
20 became uncomfortable. After the lunch Flickinger began calling Witness #20's cell  
21 phone with such frequency that the boy stopped taking Flickinger's calls. Flickinger  
22 was so obsessed with the boy that he wrote Witness #20 and told him to show some  
23 respect by answering his phone. Flickinger's conduct was so extreme that when  
24 Flickinger offered to take Witness #20 on an overnight visit to a school outside of  
25 California, Witness #20's girlfriend commented on Flickinger's bizarre behavior, and  
26 expressed her opinion to Witness #20's mother that Flickinger should never be allowed  
27 near the boy again.

28 In Spring of 2009 Flickinger admitted to Witness #21, a parent from Cabrini, that



1 he had been accused of sexual abuse and had been asked to leave the parish as a  
2 result.

3         Witness #22, a parent at Cabrini, had long been disturbed by the fact Flickinger  
4 was always taking, or trying to take, children from Cabrini on overnight trips to out of  
5 state schools, and thought his behavior was bizarre. She also observed and was  
6 uncomfortable with Flickinger's relationship with Witness #18. In May of 2009 Witness  
7 #22 reported her concern to an agent of Cabrini, and said she feared Flickinger had  
8 sexually abused children, prompting the agent to acknowledge that her own son, a  
9 former parishioner at Cabrini, had never liked Flickinger, and that she was aware of  
10 others parents and children at Cabrini who were uncomfortable with Flickinger.

11         In addition to the inappropriate touching, the San Jose Defendants allowed  
12 Flickinger to engage in conduct at Cabrini that was forbidden by the San Jose  
13 Defendants. For instance, although children were not allowed in a priest's living  
14 quarters for any reason, the San Jose Defendants allowed Flickinger to break this rule  
15 repeatedly with Plaintiff and boys such as Witness #18. Similarly, it was and is  
16 inappropriate for a priest to pull a boy out of class, take him to the priest's office, and  
17 then have the boy give his confession. Asking a child about masturbation, and probing  
18 into anyone, much less a child's, sex life by initiating questions about sex is a grave  
19 violation of both Roman Catholic moral theology and priestly training. Nevertheless,  
20 Defendants allowed Flickinger regularly to engage in such conduct since the 1960s.  
21 Additionally, at Cabrini Flickinger was seen regularly with boys in his company in  
22 inappropriate circumstances, such as in his car and in the rectory.

23         This conduct did not go unnoticed by the San Jose Defendants, who apparently  
24 placed some limitations on Flickinger's ministry as a result. For instance, in  
25 approximately 2005 Flickinger admitted to at least one parent, Witness #23, that the  
26 San Jose Defendants had placed some limitations on his ministry such as not allowing  
27 him to drive. However, it was not until he was transferred from Cabrini that more  
28 severe restrictions were placed on his ministry. Specifically, Flickinger was sent to a

1 northern California retreat house where children were not allowed, and was,  
2 purportedly, only permitted to serve mass to the nuns in residence. However,  
3 Defendants offered no warning to the public, made no reports to law enforcement, and  
4 their restrictions on Flickinger's ministry came far too late to prevent his abuse of  
5 children at Cabrini. As a result, Flickinger was able to sexually abuse Witness #26.

6  
7 **Flickinger's Abuse of Witness #26**

8         Witness #26 was raised in a devout Catholic family that attended mass every  
9 Sunday. Witness #26 served as an altar boy, most often for Fr. Flickinger, the man  
10 who Witness #26 first identified with the priesthood, and who was, from Witness #26's  
11 childhood perspective, the archetype for all priests. Witness #26's family was very  
12 active in Cabrini, and Fr. Flickinger came to their house for dinner on more than one  
13 occasion. Flickinger was the only priest with which Witness #26 spoke at the parish,  
14 and had become, at least to Witness #26, the face of the parish and his church, and  
15 the voice of God.

16         As Witness #26 grew older and began to mature physically, Flickinger's behavior  
17 towards him changed. Flickinger had always been very touchy with the boy when  
18 speaking to him, and often placed his hands on the boy's upper thighs. At the end of  
19 their conversations, Flickinger almost always gave Witness #26 long hugs in which he  
20 pulled the boy close to him, and which began to feel to Witness #26 like more than  
21 hugs. Eventually Flickinger's questioning became sexual as he began questioning  
22 Witness #26 about his interest in girls, and about masturbation. Witness #26 was  
23 extremely shy, never raised these subjects himself, and would try to avoid them when  
24 Flickinger did so, sometimes outright denying any awareness of them. Flickinger  
25 ignored Witness #26's efforts, however, and Witness #26 recalls that approximately  
26 half of their conversations involved Flickinger questioning him about sexual matters  
27 such as masturbation and how he felt about girls. More often than not Flickinger  
28 questioned Witness #26 while they were in the sacristy, or sometimes during

1 confession. All of this conduct made Witness #26 increasingly nervous and  
2 uncomfortable around Flickinger. However, because of the reverence he had for  
3 Flickinger, as the first and most important priest in his life, he continued to trust the  
4 man.

5 In late 2001 when Witness #26 was in 8<sup>th</sup> grade, Flickinger took him to lunch,  
6 purportedly to counsel the boy regarding schools to attend. Witness #26 expected that  
7 after lunch Flickinger would drive him home. Instead, without explanation, Flickinger  
8 drove them back to Cabrini and took the boy straight to the rectory. Although  
9 Flickinger's conduct was unexpected, Witness #26 assumed Flickinger wanted only to  
10 continue their discussion. Witness #26 had always viewed priests, and especially  
11 Flickinger, in a positive light, and was not concerned that Flickinger was taking them to  
12 his living quarters. When Flickinger directed Witness #26 into his bedroom the boy  
13 remained completely trusting of the priest and did not object. Unfortunately, Flickinger  
14 exploited that trust and sexually abused Witness #26 after inducing the boy to sit on his  
15 (Flickinger's) bed.

16  
17 **Despite Decades of Knowledge of the Risk to Children Posed by Flickinger,**  
18 **Defendants Continue to Transfer Flickinger Into Unsuspecting Communities, and**  
19 **Allow Him to Perform his Ministry and to Work with Children**

20 Defendants eventually transferred Flickinger from Cabrini, and he was  
21 temporarily in residence at a retreat center in Northern California. However,  
22 Defendants later transferred Flickinger once again, this time to one of Defendant  
23 Archbishop's parishes, St. Paul in San Francisco, a parish with an elementary school  
24 with children the same age that Plaintiff Michelle S. was during the period of abuse.  
25 Within the last three months Flickinger was still listed as being in residence at that  
26 parish and school. Both the parish and school were dangerously unaware of  
27 Flickinger's history despite the fact Defendant Archbishop has been aware of Fr.  
28 Flickinger's propensities at least since Flickinger confronted Witness #14 in the early

1 1970s and attempted to force Witness #14 to clear his (Flickinger's) name with regards  
2 to Flickinger's misconduct towards Witness #14 while the boy was a student at SJMHS.  
3 Equally disturbing is the fact that although Defendant Archbishop has claimed recently  
4 that Flickinger was at St. Paul's only as a retired priest, in reality Defendant Archbishop  
5 allowed Flickinger to work with children during Sunday School at St. Paul.

6         Unfortunately, Defendants dangerous mismanagement of the perpetrator has  
7 continued. Specifically, within the last three months Defendants transferred Flickinger  
8 yet again, this time to a residential living facility, New Bethany, in Los Banos, CA.  
9 According to public statements by Defendant Fresno Bishop, Flickinger supposedly was  
10 retired and was not performing his ministry at New Bethany. In reality, within the last  
11 three months Flickinger assisted in performing mass at New Bethany. These services  
12 were conducted in the facility's chapel and were open to the public. And despite the  
13 fact that Defendants' agents have admitted to awareness of multiple reports of sexual  
14 abuse by Flickinger in both Fresno and San Jose, they provided no warning to the  
15 facility, its residents, or the Los Banos community of the danger posed by Flickinger.  
16 That danger continues as Flickinger's current assignment is known only to Defendants.

17         The consequences of the Defendants' continuing corporate practices with  
18 regards to their perpetrators, as illustrated by their handling of Fr. Flickinger, have been  
19 disastrous both for children, and for a society that continues to bear the financial  
20 burden of the psychological fallout for abuse survivors. Abuse survivors often engage  
21 in addictive, self-destructive, and, unfortunately, sometimes criminal behavior as they  
22 deal with the psychological scars caused by childhood sexual abuse. These behaviors  
23 in turn result in things such as divorce proceedings on court calendars, substance  
24 abuse, arrests, and incarcerations, all of which are paid for by the common taxpayer  
25 rather than by the truly culpable but tax-exempt organizations that protected,  
26 transferred and/or expelled perpetrators such as Fr. Flickinger.

27 7.         Time and again Defendants have had the opportunity to end the cycle of abuse  
28 by reporting perpetrators such as Flickinger to law enforcement, by assisting rather than

1 obstructing criminal investigations such as those of Fr. Flickinger, and by warning the  
2 general public when a priest has been accused of sexually assaulting a child.  
3 Tragically, the Defendants' ongoing efforts to protect their pedophilic members, and to  
4 protect their financial interests, establish a continuing pattern of conduct causing new  
5 harm to today's children, new trauma to adult survivors of childhood sexual abuse, and  
6 causing the continuing financial burden to a society paying for the resulting  
7 psychological fallout.

8 8. For decades, if not far longer, Defendants have known perpetrators such as Fr.  
9 Flickinger were sexually assaulting children, and of the fact any child exposed to their  
10 agents was at a heightened risk of being sexually assaulted. Since that time  
11 Defendants have been concealing these crimes, and shielding their criminal members  
12 from discovery and/or prosecution.

13  
14 **THE COMPELLING STATE INTEREST IN PREVENTING CHILDHOOD SEXUAL**  
15 **ABUSE**

16 9. California courts and the state legislature have recognized, repeatedly, the  
17 compelling state interest in preventing childhood sexual abuse. In re The Clergy  
18 Cases I, 188 Cal.App.4th 1224 (2010) ("all citizens have a compelling interest in  
19 knowing if a prominent and powerful institution has cloaked in secrecy decades of  
20 sexual abuse"); Fredenburg v. Fremont, 119 Cal.App.4th 408, 412-13 (2004)  
21 (discussing enactment and legislative history of Megan's Law); Burt v. County of  
22 Orange, 120 Cal.App.4th 273, 285 (2004) ("concerns with protecting children from harm  
23 is a compelling interest supporting its efforts in gathering information and filing reports  
24 concerning persons suspected of child abuse"); Roe v. Superior Court, 229 Cal.App.3d  
25 832, 838 (1991) (recognizing the state's compelling interest in protecting children from  
26 abuse); People v. Gonzalez, 81 Cal.App.3d 274, 277 (1978) (recognizing compelling  
27 state interest in the protection of children from sexual molestation); People v. Mills, 81  
28 Cal. App.3d 171, 181 (1978) (person who sexually assaults a child has waived his right

1 to privacy). However, for decades the Defendants have successfully frustrated law  
2 enforcement efforts to enforce this compelling state interest, shielding perpetrators from  
3 criminal prosecution. Time and again the Defendants' efforts have helped such  
4 criminals escape prosecution by concealing their crimes until the expiration of the  
5 applicable criminal statutes of limitation, or by warning them of investigations by law  
6 enforcement. The conduct involving Fr. Flickinger is but one example of this continuing  
7 pattern of conduct. The end result of Defendants' conduct is Flickinger remains  
8 unregistered as a sex-offender, and unidentifiable to the public as a predator.

9 9.1 The sexual abuse and exploitation of Plaintiff and the circumstances under  
10 which it occurred caused Plaintiff to develop various psychological coping mechanisms  
11 which reasonably made her incapable of ascertaining the resulting damages from that  
12 conduct. Within 3 years of filing this lawsuit Plaintiff discovered or reasonably should  
13 have discovered that psychological injury or illness occurring after the age of majority  
14 was caused by the sexual abuse. Specifically, after years of avoiding Sacred Heart,  
15 Plaintiff returned with her family for Christmas mass in 2010. During the service she  
16 found herself staring at a stained glass window, and realized she had focused on that  
17 window while dissociating during one of the instances of abuse by Flickinger. This  
18 incident at the 2010 Christmas mass was the trigger that ultimately resulted in Plaintiff  
19 recognizing the connection between the sexual abuse by the Perpetrator and the  
20 psychological injuries that Plaintiff suffered.

21  
22 **FIRST CAUSE OF ACTION**

23 **PUBLIC NUISANCE**

24 **(Against All Defendants)**

25 10. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
26 set forth herein.

27 11. Defendants continue to conspire and engage in efforts to: 1) conceal from the  
28 general public the sexual assaults committed by, the identities of, and the

1 pedophilic/ephebophilic tendencies of, Fr. Flickinger and Defendants' other pedophilic  
2 agents; 2) attack the credibility of the victims of Fr. Flickinger and Defendants' other  
3 pedophilic/ephebophilic agents; 3) protect Fr. Flickinger and Defendants' other  
4 pedophilic/ephebophilic current and former agents from criminal prosecution and  
5 registration as sex offenders for their sexual assaults against children; and 4) after  
6 receiving reports or notice of misconduct by men such as Fr. Flickinger, transferring  
7 them to new parishes without any warning to parishioners of the threat posed by such  
8 men, all in violation of law.

9 12. The negligence and/or deception and concealment by Defendants was and is  
10 injurious to the health of, indecent or offensive to the senses of, and an obstruction to  
11 the free use of property by, the general public, including but not limited to residents of  
12 the Counties of Fresno, Santa Clara, and San Francisco and all other members of the  
13 general public who live in communities where Defendants conducted, and continue to  
14 conduct, their work and/or ministry, and was and is indecent and offensive to the  
15 senses, so as to interfere with the general public's comfortable enjoyment of life in that  
16 children cannot be left unsupervised in any location where Defendants' agents are  
17 present as the general public cannot trust Defendants to prohibit their pedophilic agents  
18 from supervising, caring for, or having any contact with children, nor to warn parents of  
19 the presence of the pedophilic agents of Defendants, nor to identify their pedophilic  
20 agents, nor to identify and/or report to law enforcement their agents accused of  
21 childhood sexual abuse, nor to refrain from interfering with or obstructing the criminal  
22 investigations of these agents, thus creating an impairment of the safety of children in  
23 the neighborhoods where Defendants conducted, and continue to conduct, their work  
24 and/or ministries. Defendants continue to impair the safety of today's children by  
25 misrepresenting to and/or concealing from the public the Perpetrator's current and  
26 recent assignments, residence locations, and scope of ministry.

27 13. Defendants' conduct has caused further injury to the public and severely  
28 impaired the safety of children where Defendants have protected and concealed Fr.

1 Flickinger and Defendants' other pedophilic/ephebophilic agents from criminal  
2 prosecution and registration as sex offenders for their sexual assaults, where  
3 Defendants' other pedophilic/ephebophilic agents subsequently have left Defendants'  
4 employ, and where Defendants have disavowed any responsibility for Defendants'  
5 other pedophilic/ephebophilic former agents despite the fact Defendants facilitated  
6 these former agents' avoiding criminal prosecution and having to register as sex  
7 offenders. As a result of Defendants' conduct, when Defendants' former agents have  
8 sought employment placing them in positions of trust with children, Defendants are the  
9 only ones aware of the risk posed by these former agents, and potential employers,  
10 childcare custodians, and parents have no means of identifying the risk to their children  
11 posed by such men.

12 14. The negligence and/or deception and concealment by Defendants was specially  
13 injurious to Plaintiff's health as she and her family were unaware of the danger posed  
14 to children left unsupervised with agents of Defendants, and as a result of this  
15 deception, Plaintiff was placed in the custody and control of Fr. Flickinger, at the time  
16 an agent of the San Jose Defendants, who subsequently sexually assaulted Plaintiff.

17 15. The continuing public nuisance created by Defendants was, and continues to be,  
18 the proximate cause of the injuries and damages to the general public as alleged in ¶  
19 13, and of Plaintiff's special injuries and damages as alleged in ¶ 14.

20 15.1 In doing the aforementioned acts, Defendants acted negligently and recklessly  
21 and/or intentionally, maliciously and with conscious disregard for Plaintiff's rights.

22 16. As a result of the above-described conduct, Plaintiff has suffered, and continues  
23 to suffer special injury in that she suffers great pain of mind and body, shock, emotional  
24 distress, physical manifestations of emotional distress, embarrassment, loss of  
25 self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and  
26 continues to suffer spiritually; was prevented and will continue to be prevented from  
27 performing Plaintiff's daily activities and obtaining the full enjoyment of life; has  
28 sustained and will continue to sustain loss of earnings and earning capacity; and/or has



1 incurred and will continue to incur expenses for medical and psychological treatment,  
2 therapy, and counseling. As a proximate result of these injuries, Plaintiff has suffered  
3 general and special damages in an amount in excess of the jurisdictional minimum of  
4 this Court.

5 17. As a further result of the above-described conduct by Defendants, Plaintiff  
6 further requests injunctive relief prohibiting Defendants from, among other things:  
7 allowing their pedophilic/ephebophilic agents to have any unsupervised contact with  
8 children; transferring their pedophilic/ephebophilic agents to communities whose  
9 citizens are unaware of the risk to children posed by said agents; failing/refusing to  
10 disclose to and/or concealing from the general public and/or law enforcement when  
11 Defendants have transferred a pedophilic/ephebophilic agent into their midst;  
12 failing/refusing to disclose to and/or concealing from law enforcement and/or the  
13 general public the identities and the criminal acts of their pedophilic/ephebophilic  
14 agents; failing/refusing to disclose to and/or concealing from the public and/or law  
15 enforcement reports, complaints, accusations or allegations of acts of childhood sexual  
16 abuse committed by Defendants' current or former agents; and warning their agents  
17 accused of abuse that they are the subjects of a criminal investigation. Defendants  
18 should be ordered to stop failing/refusing to disclose to and/or concealing and instead  
19 should identify each and every one of their current and former agents who have been  
20 accused of childhood sexual abuse, the dates of the accusation(s), the date(s) of the  
21 alleged abuse, the location(s) of the alleged abuse, and the accused agents'  
22 assignment histories.

23  
24 **SECOND CAUSE OF ACTION**

25 **NEGLIGENCE**

26 **(Against The San Jose Defendants)**

27 18. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
28 set forth herein.

1 19. While Plaintiff was a student at Defendant School and a member of Defendant  
2 Parish, Fr. Flickinger engaged in unpermitted, harmful and offensive sexual conduct  
3 and contact with Plaintiff. Plaintiff was approximately seven years old at the time. Said  
4 conduct was undertaken after the San Jose Defendants learned of the risk he posed  
5 to children, while Fr. Flickinger was an employee, volunteer, representative, or agent  
6 of the San Jose Defendants, and while in the course and scope of employment with the  
7 San Jose Defendants, and/or was ratified by the actions of the San Jose Defendants.  
8 The San Jose Defendants' conduct was wanton and reckless and/or evidenced a  
9 conscious disregard for the rights and safety of Plaintiff and other children.

10 20. Prior to or during the abuse alleged above, the San Jose Defendants knew, had  
11 reason to know, or were otherwise on notice of unlawful sexual conduct by Fr.  
12 Flickinger and Defendants' other pedophilic and/or ephebophilic agents. The San Jose  
13 Defendants failed to take reasonable steps and failed to implement reasonable  
14 safeguards to avoid acts of unlawful sexual conduct in the future by Fr. Flickinger and  
15 Defendants' other pedophilic and/or ephebophilic agents, including, but not limited to,  
16 preventing or avoiding placement of Fr. Flickinger and Defendants' other pedophilic  
17 and/or ephebophilic agents in functions or environments in which contact with children  
18 was an inherent part of those functions or environments. Furthermore, at no time  
19 during the periods of time alleged did the San Jose Defendants have in place a system  
20 or procedure to supervise and/or monitor employees, volunteers, representatives, or  
21 agents to insure that they did not molest or abuse minors in the San Jose Defendants'  
22 care, including the Plaintiff.

23 21. The San Jose Defendants had a duty to protect the minor Plaintiff when she was  
24 entrusted to their care by Plaintiff's parents. Plaintiff's care, welfare, and/or physical  
25 custody was temporarily entrusted to the San Jose Defendants. The San Jose  
26 Defendants voluntarily accepted the entrusted care of Plaintiff. As such, the San Jose  
27 Defendants owed Plaintiff, a minor child, a special duty of care, in addition to a duty of  
28 ordinary care, and owed Plaintiff the higher duty of care that adults dealing with children

1 owe to protect them from harm.

2 22. Defendants, by and through their agents, servants and employees, knew or  
3 reasonably should have known of Fr. Flickinger's and Defendants' other pedophilic  
4 and/or ephebophilic agents' dangerous and exploitive propensities and that they were  
5 unfit agents. It was foreseeable that if the San Jose Defendants did not adequately  
6 exercise or provide the duty of care owed to children in their care, including but not  
7 limited to Plaintiff, the child entrusted to the San Jose Defendants' care would be  
8 vulnerable to sexual abuse by Fr. Flickinger and Defendants' other pedophilic and/or  
9 ephebophilic agents.

10 23. The San Jose Defendants breached their duty of care to the minor Plaintiff by  
11 allowing Fr. Flickinger to come into contact with the minor Plaintiff without supervision;  
12 by failing to adequately hire, supervise, or retain Fr. Flickinger and Defendants' other  
13 pedophilic and/or ephebophilic agents who they permitted and enabled to have access  
14 to Plaintiff; by failing to investigate or otherwise confirm or deny such facts about Fr.  
15 Flickinger and Defendants' other pedophilic and/or ephebophilic agents; by failing to tell  
16 or concealing from Plaintiff, Plaintiff's parents, guardians, or law enforcement officials  
17 that Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents were  
18 or may have been sexually abusing minors; by failing to tell or concealing from  
19 Plaintiff's parents, guardians, or law enforcement officials that Plaintiff was or may have  
20 been sexually abused after the San Jose Defendants knew or had reason to know that  
21 Fr. Flickinger may have sexually abused Plaintiff, thereby enabling Plaintiff to continue  
22 to be endangered and sexually abused, and/or creating the circumstance where  
23 Plaintiff was less likely to receive medical/mental health care and treatment, thus  
24 exacerbating the harm done to Plaintiff; and/or by holding out Fr. Flickinger to the  
25 Plaintiff and her parents or guardians as being in good standing and trustworthy. The  
26 San Jose Defendants cloaked within the facade of normalcy Fr. Flickinger's and  
27 Defendants' other pedophilic and/or ephebophilic agents' contact and/or actions with  
28 the Plaintiff and/or with other minors who were victims of Fr. Flickinger and Defendants'

1 other pedophilic and/or ephebophilic agents, and/or disguised the nature of the sexual  
2 abuse and contact.

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

11  
12 **THIRD CAUSE OF ACTION**

13 **NEGLIGENT SUPERVISION/FAILURE TO WARN**

14 **(Against All Defendants)**

15 25. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
16 set forth herein.

17 26. Defendants had a duty to provide reasonable supervision of Fr. Flickinger and  
18 Defendants' other pedophilic and/or ephebophilic agents, and to use reasonable care  
19 in investigating Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
20 agents. Defendants also had a duty and to provide adequate warning to the Plaintiff,  
21 the Plaintiff's family, minor students, minor parishioners, and other archdioceses and/or  
22 dioceses into which they transferred Fr. Flickinger of Fr. Flickinger's and Defendants'  
23 other pedophilic and/or ephebophilic agents' dangerous propensities and unfitness,  
24 particularly after the conduct they observed by Flickinger in their respective dioceses  
25 and archdiocese before Flickinger abused Plaintiff. Additionally, because the San Jose  
26 Defendants knew or should have known of the heightened risk Fr. Flickinger and  
27 Defendants' other pedophilic and/or ephebophilic agents posed to all children, the San  
28 Jose Defendants had a heightened duty to provide reasonable supervision and

1 protection to children with whom the San Jose Defendants allowed Fr. Flickinger and  
2 Defendants' other pedophilic and/or ephebophilic agents to have contact and/or  
3 custody and control.

4 27. Defendants, by and through their agents, servants and employees, knew or  
5 reasonably should have known of Fr. Flickinger's and Defendants' other pedophilic  
6 and/or ephebophilic agents' dangerous and exploitive propensities and that they were  
7 unfit agents. The San Jose Defendants also knew that if they failed to provide children  
8 who had contact with Fr. Flickinger and Defendants' other pedophilic and/or  
9 ephebophilic agents sufficient supervision and protection, those children would be  
10 vulnerable to sexual assaults by Fr. Flickinger and Defendants' other pedophilic and/or  
11 ephebophilic agents. Despite such knowledge, the San Jose Defendants negligently  
12 failed to supervise Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
13 agents in the position of trust and authority as Roman Catholic Priests, religious  
14 brothers, religious instructors, counselors, school administrators, school teachers,  
15 surrogate parents, spiritual mentors, emotional mentors, and/or other authority figures,  
16 where they were able to commit the wrongful acts against the Plaintiff. The San Jose  
17 Defendants also failed to provide reasonable supervision of Fr. Flickinger and  
18 Defendants' other pedophilic and/or ephebophilic agents. All of the Defendants failed  
19 to use reasonable care in investigating Fr. Flickinger and Defendants' other pedophilic  
20 and/or ephebophilic agents, and failed to provide adequate warning to other  
21 archdioceses and/or dioceses into which they transferred Fr. Flickinger, and to Plaintiff  
22 and Plaintiff's family of Fr. Flickinger's and Defendants' other pedophilic and/or  
23 ephebophilic agents' dangerous propensities and unfitness. The San Jose Defendants  
24 further failed to provide Plaintiff with adequate supervision and protection, and failed  
25 to take reasonable measures to prevent future sexual abuse. Defendants' conduct was  
26 wanton and reckless and/or evidenced a conscious disregard for the rights and safety  
27 of Plaintiff and other children.

28 28. As a result of the above-described conduct, Plaintiff has suffered, and continues

1 to suffer great pain of mind and body, shock, emotional distress, physical  
2 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
3 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
4 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
5 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
6 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
7 to incur expenses for medical and psychological treatment, therapy, and counseling.  
8 As a proximate result of these injuries, Plaintiff has suffered general and special  
9 damages in an amount in excess of the jurisdictional minimum of this Court.

10  
11 **FOURTH CAUSE OF ACTION**  
12 **NEGLIGENT HIRING/RETENTION**  
13 **(Against The San Jose Defendants)**

14 29. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
15 set forth herein.

16 30. The San Jose Defendants had a duty not to hire and/or retain Fr. Flickinger and  
17 Defendants' other pedophilic and/or ephebophilic agents given their dangerous and  
18 exploitive propensities.

19 31. The San Jose Defendants, by and through their agents, servants and  
20 employees, knew or reasonably should have known of Fr. Flickinger's and Defendants'  
21 other pedophilic and/or ephebophilic agents' dangerous and exploitive propensities  
22 and/or that they were unfit agents. Despite such knowledge, the San Jose Defendants  
23 negligently hired and/or retained Fr. Flickinger and Defendants' other pedophilic and/or  
24 ephebophilic agents in the position of trust and authority as Roman Catholic Priests,  
25 religious brothers, religious instructors, counselors, school administrators, school  
26 teachers, surrogate parents, spiritual mentors, emotional mentors, and/or other  
27 authority figures, where they were able to commit the wrongful acts against the Plaintiff.  
28 The San Jose Defendants failed to use reasonable care in investigating Fr. Flickinger

1 and/or Defendants' other pedophilic and/or ephebophilic agents and failed to provide  
2 adequate warning to Plaintiff and Plaintiff's family of Fr. Flickinger' and Defendants'  
3 other pedophilic and/or ephebophilic agents' dangerous propensities and unfitness.  
4 The San Jose Defendants further failed to take reasonable measures to prevent future  
5 sexual abuse. The San Jose Defendants' conduct was wanton and reckless and/or  
6 evidenced a conscious disregard for the rights and safety of Plaintiff and other children.

7 32. As a result of the above-described conduct, Plaintiff has suffered, and continues  
8 to suffer great pain of mind and body, shock, emotional distress, physical  
9 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
10 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
11 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
12 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
13 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
14 to incur expenses for medical and psychological treatment, therapy, and counseling.  
15 As a proximate result of these injuries, Plaintiff has suffered general and special  
16 damages in an amount in excess of the jurisdictional minimum of this Court.

17  
18 **FIFTH CAUSE OF ACTION**

19 **FRAUD**

20 **(Against The San Jose Defendants)**

21 33. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
22 set forth herein.

23 34. The San Jose Defendants knew and/or had reason to know of the sexual  
24 misconduct of Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

25 35. The San Jose Defendants misrepresented, concealed or failed to disclose  
26 information relating to sexual misconduct of Fr. Flickinger and Defendants' other  
27 pedophilic and/or ephebophilic agents as described herein, and the San Jose  
28 Defendants continue to misrepresent, conceal, and fail to disclose information relating

1 to, among other things, the sexual misconduct of Fr. Flickinger and Defendants' other  
2 pedophilic and/or ephebophilic agents as described herein.

3 36. The San Jose Defendants knew that they misrepresented, concealed or failed  
4 to disclose information relating to, among other things, the sexual misconduct of Fr.  
5 Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

6 37. Plaintiff justifiably relied upon the San Jose Defendants for information relating  
7 to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or  
8 ephebophilic agents.

9 38. The San Jose Defendants, with the intent to conceal and defraud, did  
10 misrepresent, conceal or fail to disclose information relating to the sexual misconduct  
11 of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

12 39. As a direct result of the San Jose Defendants' fraud, Plaintiff has suffered, and  
13 continues to suffer great pain of mind and body, shock, emotional distress, physical  
14 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
15 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
16 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
17 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
18 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
19 to incur expenses for medical and psychological treatment, therapy, and counseling.  
20 As a proximate result of these injuries, Plaintiff has suffered general and special  
21 damages in an amount in excess of the jurisdictional minimum of this Court.

22 40. In addition, when Plaintiff discovered the fraud of the San Jose Defendants, and  
23 continuing thereafter, Plaintiff experienced recurrences of the above-described injuries.  
24 In addition, when Plaintiff finally discovered the fraud of the San Jose Defendants, and  
25 continuing thereafter, Plaintiff experienced extreme and severe mental and emotional  
26 distress that Plaintiff had been the victim of the San Jose Defendants' fraud; that  
27 Plaintiff had not been able to help other minors being molested because of the fraud;  
28 and that Plaintiff had not been able because of the fraud to receive timely medical



1 treatment needed to deal with the problems Plaintiff had suffered and continues to  
2 suffer as a result of the molestations.

3  
4 **SIXTH CAUSE OF ACTION**  
5 **FIDUCIARY/CONFIDENTIAL RELATIONSHIP FRAUD**  
6 **AND CONSPIRACY TO COMMIT FRAUD**  
7 **(Against The San Jose Defendants)**

8 41. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
9 set forth herein.

10 42. Because of Plaintiff's young age, and because of the status of Fr. Flickinger as  
11 an authority figure to Plaintiff, Plaintiff was vulnerable to Fr. Flickinger. Fr. Flickinger  
12 sought Plaintiff out, and was empowered by and accepted Plaintiff's vulnerability.  
13 Plaintiff's vulnerability also prevented Plaintiff from effectively protecting herself.

14 43. By holding Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
15 agents out as a qualified Roman Catholic clergy, religious brothers, religious instructors,  
16 counselors, school administrators, school teachers, surrogate parents, spiritual  
17 mentors, emotional mentors, medical services providers and/or care givers, and/or  
18 other authority figures, and by undertaking the religious and/or secular instruction  
19 and/or spiritual and emotional counseling of Plaintiff, the San Jose Defendants held  
20 special positions of trust and entered into a fiduciary and/or confidential relationship  
21 with the minor Plaintiff.

22 44. Having a fiduciary and/or confidential relationship, the San Jose Defendants had  
23 the duty to obtain and disclose information relating to sexual misconduct of Fr.  
24 Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

25 45. Defendants misrepresented, concealed or failed to disclose information relating  
26 to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or  
27 ephebophilic agents, and the San Jose Defendants continued to misrepresent, conceal,  
28 and/or fail to disclose information relating to sexual misconduct of Fr. Flickinger and

1 Defendants' other pedophilic and/or ephebophilic agents as described herein.

2 46. The San Jose Defendants knew that they misrepresented, concealed or failed  
3 to disclose information relating to sexual misconduct of Fr. Flickinger and Defendants'  
4 other pedophilic and/or ephebophilic agents.

5 47. Plaintiff justifiably relied upon the San Jose Defendants for information relating  
6 to sexual misconduct of Fr. Flickinger and Defendants' other pedophilic and/or  
7 ephebophilic agents.

8 48. The San Jose Defendants, in concert with each other and with the intent to  
9 conceal and defraud, conspired and came to a meeting of the minds whereby they  
10 would misrepresent, conceal or fail to disclose information relating to the sexual  
11 misconduct of Fr. Flickinger and/or Defendants' other pedophilic and/or ephebophilic  
12 agents.

13 49. By so concealing, the San Jose Defendants committed at least one act in  
14 furtherance of the conspiracy.

15 50. As a direct result of the San Jose Defendants' fraud and conspiracy, Plaintiff has  
16 suffered, and continues to suffer great pain of mind and body, shock, emotional  
17 distress, physical manifestations of emotional distress, embarrassment, loss of  
18 self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and  
19 continues to suffer spiritually; was prevented and will continue to be prevented from  
20 performing Plaintiff's daily activities and obtaining the full enjoyment of life; has  
21 sustained and will continue to sustain loss of earnings and earning capacity; and/or has  
22 incurred and will continue to incur expenses for medical and psychological treatment,  
23 therapy, and counseling. As a proximate result of these injuries, Plaintiff has suffered  
24 general and special damages in an amount in excess of the jurisdictional minimum of  
25 this Court.

26 51. In addition, when Plaintiff discovered the fraud of the San Jose Defendants, and  
27 continuing thereafter, Plaintiff experienced recurrences of the above-described injuries.  
28 In addition, when Plaintiff finally discovered the fraud of the San Jose Defendants, and

1 continuing thereafter, Plaintiff experienced extreme and severe mental and emotional  
2 distress that Plaintiff had been the victim of the San Jose Defendants' fraud; that  
3 Plaintiff had not been able to help other minors being molested because of the fraud;  
4 and that Plaintiff had not been able because of the fraud to receive timely medical  
5 treatment needed to deal with the problems Plaintiff had suffered and continues to  
6 suffer as a result of the molestations.

7  
8 **SEVENTH CAUSE OF ACTION**

9 **BREACH OF FIDUCIARY DUTY AND/OR CONFIDENTIAL RELATIONSHIP**

10 **(Against The San Jose Defendants)**

11 52. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
12 set forth herein.

13 53. Because of Plaintiff's young age, and because of the status of Fr. Flickinger as  
14 an authority figure to Plaintiff, Plaintiff was vulnerable to Fr. Flickinger. Fr. Flickinger  
15 sought Plaintiff out, and was empowered by and accepted Plaintiff's vulnerability.  
16 Plaintiff's vulnerability also prevented Plaintiff from effectively protecting herself.

17 54. By holding Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
18 agents out as a qualified Roman Catholic clergy, religious brothers, religious instructors,  
19 counselors, school administrators, school teachers, surrogate parents, spiritual  
20 mentors, emotional mentors, medical services providers and/or care givers, and/or any  
21 other authority figure, by allowing Fr. Flickinger to have custody and control of and/or  
22 contact with the Plaintiff, and by undertaking the religious and/or secular instruction  
23 and/or spiritual and/or emotional counseling and/or medical care of Plaintiff, the San  
24 Jose Defendants entered into a fiduciary and/or confidential relationship with the minor  
25 Plaintiff.

26 55. The San Jose Defendants and each of them breached their fiduciary duty to  
27 Plaintiff by engaging in the negligent and wrongful conduct described herein.

28 56. As a direct result of the San Jose Defendants' breach of their fiduciary duty,

1 Plaintiff has suffered, and continues to suffer great pain of mind and body, shock,  
2 emotional distress, physical manifestations of emotional distress, embarrassment, loss  
3 of self-esteem, disgrace, humiliation, and loss of enjoyment of life; has suffered and  
4 continues to suffer spiritually; was prevented and will continue to be prevented from  
5 performing Plaintiff's daily activities and obtaining the full enjoyment of life; has  
6 sustained and will continue to sustain loss of earnings and earning capacity; and/or has  
7 incurred and will continue to incur expenses for medical and psychological treatment,  
8 therapy, and counseling. As a proximate result of these injuries, Plaintiff has suffered  
9 general and special damages in an amount in excess of the jurisdictional minimum of  
10 this Court.

11  
12 **EIGHTH CAUSE OF ACTION**

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

14 **(Against The San Jose Defendants)**

15 57. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
16 set forth herein.

17 58. The San Jose Defendants breached their duty to take reasonable protective  
18 measures to protect Plaintiff and other minor parishioners and/or students from the risk  
19 of childhood sexual abuse by Fr. Flickinger and/or Defendants' other pedophilic and/or  
20 ephebophilic agents, such as the failure to properly warn, train, or educate Plaintiff, her  
21 parents, the San Jose Defendants' agents, employees and volunteers, and other minor  
22 parishioners and/or students about how to avoid such a risk and/or defend himself or  
23 herself if necessary, pursuant to Juarez v. Boy Scouts of America, Inc., 81 Cal.App.4th  
24 377 (2000). The San Jose Defendants' conduct was wanton and reckless and/or  
25 evidenced a conscious disregard for the rights and safety of Plaintiff and other children.

26 59. The San Jose Defendants knew, or in the exercise of reasonable diligence  
27 should have known, of the general risk of sexual assaults against children and,  
28 specifically, of Fr. Flickinger's and Defendants' other pedophilic and/or ephebophilic

1 agents' propensities to commit, and history of committing, sexual abuse of children, and  
2 that an undue risk to children in their custody and care, such as Plaintiff, would exist  
3 because of this propensity to commit sexual assaults, and the history of sexual assaults  
4 against children, unless the San Jose Defendants adequately taught, educated,  
5 secured, oversaw, and maintained students, including Plaintiff, as well as other children  
6 in the custody and control of, or in contact with, Catholic clergy and Defendants' other  
7 pedophilic and ephebophilic agents. Future agents of the San Jose Defendants were  
8 put on actual and/or constructive notice, at least as early as 1972, that Fr. Flickinger  
9 and Defendants' other pedophilic and/or ephebophilic agents were sexually assaulting  
10 children at countless locations, including Fresno County, and, subsequently, Santa  
11 Clara County among others. From that date forward, current and/or future agents of  
12 the San Jose Defendants repeatedly and negligently ignored complaints from victims  
13 and/or their parents, as well as warnings from Catholic clergy, that Fr. Flickinger and  
14 Defendants' other pedophilic and/or ephebophilic Catholic clergy were assaulting  
15 children in, among other locations, Fresno County, and, subsequently, Santa Clara  
16 County.

17         The San Jose Defendants also knew or should have known that the general risk  
18 of sexual assaults against children and, specifically, the risk posed by Fr. Flickinger and  
19 Defendants' other pedophilic and/or ephebophilic agents' propensities to commit, and  
20 history of committing, sexual abuse of children, could be eliminated, or at least  
21 minimized, if they took steps to educate, warn and train children in the San Jose  
22 Defendants' custody and control, as well as those children's parents, and the San Jose  
23 Defendants' employees, agents and volunteers, regarding the danger posed by  
24 pedophilic and ephebophilic clergy, how to recognize and avoid this danger, and how  
25 a child should defend herself or himself when assaulted by pedophilic and/or  
26 ephebophilic clergy. Based on their knowledge of the risk posed by Fr. Flickinger and  
27 Defendants' other pedophilic and/or ephebophilic agents, and the history of sexual  
28 assaults around Fresno County, and, subsequently, Santa Clara County since at least

1 1972, the San Jose Defendants had a duty to take the aforementioned steps.

2 Notwithstanding the knowledge of the general risk of sexual assaults against  
3 children and, specifically, that Fr. Flickinger and Defendants' other pedophilic and/or  
4 ephebophilic agents had such propensities to commit, and had committed, sexual  
5 abuse of children, and notwithstanding that the San Jose Defendants knew it was not  
6 only reasonably foreseeable but likely that Fr. Flickinger and Defendants' other  
7 pedophilic and/or ephebophilic agents would sexually assault children, the San Jose  
8 Defendants breached their duty to adequately teach, educate, secure, oversee, and  
9 maintain students, including Plaintiff, as well as all other children in the custody and  
10 control of, or in contact with, Catholic clergy, and breached their duty to educate, warn  
11 and train children in the San Jose Defendants' custody and control and/or who they  
12 knew would come into contact with Flickinger, as well as those children's parents and  
13 the San Jose Defendants' employees, agents and volunteers, regarding the danger to  
14 children posed by pedophilic and/or ephebophilic clergy, how to recognize and avoid  
15 this danger, and how a child should defend himself or herself when assaulted by  
16 pedophilic and/or ephebophilic clergy.

17 The San Jose Defendants knew or should have known that their failure to  
18 exercise reasonable care, as discussed above, would cause Plaintiff severe emotional  
19 distress and physical injury. Because of the foreseeability and likelihood of sexual  
20 assaults by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents  
21 against Plaintiff and other children, the San Jose Defendants breached their duty of  
22 care to Plaintiff and other children in their custody and control.

23 The failure of the San Jose Defendants to educate, warn and train children in the  
24 San Jose Defendants' custody and control, as well as those children's parents and the  
25 San Jose Defendants' employees, agents and volunteers, regarding the danger to  
26 children posed by pedophilic and/or ephebophilic clergy, how to recognize and avoid  
27 this danger, and how a child should defend himself or herself when assaulted by  
28 pedophilic and ephebophilic clergy, was the proximate cause of Plaintiff's injuries as

1 alleged herein.

2 60. As a result of the above-described conduct, Plaintiff has suffered, and continues  
3 to suffer great pain of mind and body, shock, emotional distress, physical  
4 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
5 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
6 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
7 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
8 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
9 to incur expenses for medical and psychological treatment, therapy, and counseling.  
10 As a proximate result of these injuries, Plaintiff has suffered general and special  
11 damages in an amount in excess of the jurisdictional minimum of this Court.

12  
13 **NINTH CAUSE OF ACTION**

14 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

15 **(Against All Defendants)**

16 61. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
17 set forth herein.

18 62. Defendants' conduct was extreme and outrageous and was intentional and/or  
19 wanton and reckless with a conscious disregard for the rights and safety of Plaintiff and  
20 other children. Defendants knew or should have known Fr. Flickinger and Defendants'  
21 other pedophilic and/or ephebophilic agents were spending time, and would continue  
22 to spend time in the future, in the company of and assaulting numerous children,  
23 including Plaintiff, around Fresno County, and, subsequently, Santa Clara County and  
24 other locations, including on school grounds, in the parishes, and in Fr. Flickinger's  
25 rectory rooms. Defendants also knew or should have known Fr. Flickinger and  
26 Defendants' other pedophilic and/or ephebophilic agents were high risks to all children  
27 as Defendants had received numerous complaints and other notice of prior acts of  
28 childhood sexual abuse by Fr. Flickinger and Defendants' other pedophilic and/or

1 ephebophilic agents, and had sent Fr. Flickinger and/or Defendants' other pedophilic  
2 and/or ephebophilic agents for treatment for their pedophilia, prior to and/or after  
3 assigning them to work at Defendant Parish and/or Defendant School. Given their  
4 knowledge of numerous prior acts of abuse by Fr. Flickinger and Defendants' other  
5 pedophilic and/or ephebophilic agents, Defendants knew or should have known that  
6 every child exposed to Fr. Flickinger and Defendants' other pedophilic and/or  
7 ephebophilic agents, including Plaintiff, was substantially certain to be assaulted by Fr.  
8 Flickinger and Defendants' other pedophilic and/or ephebophilic agents. Defendants  
9 knew or should have known, and had the opportunity to learn of, the intentional and  
10 malicious conduct of Fr. Flickinger and Defendants' other pedophilic and/or  
11 ephebophilic agents, and thereby ratified and joined in said conduct by failing to  
12 terminate, discharge, or at least discipline Fr. Flickinger and Defendants' other  
13 pedophilic and/or ephebophilic agents after learning of their propensities, and/or by  
14 failing to warn anyone of Fr. Flickinger's and Defendants' other pedophilic and/or  
15 ephebophilic agents propensities and/or by failing to prevent them from having contact  
16 with children. The conduct of Defendants in confirming, concealing and ratifying that  
17 conduct was done with knowledge that the emotional and physical distress of Plaintiff  
18 and other children exposed to these men would thereby increase, and was done with  
19 a wanton and reckless disregard of the consequences to Plaintiff and other children in  
20 their custody and control.

21 63. As a result of Defendants' conduct, Plaintiff experienced and continues to  
22 experience severe emotional distress resulting in bodily harm.

23 64. As a result of the above-described conduct, Plaintiff has suffered, and continues  
24 to suffer great pain of mind and body, shock, emotional distress, physical  
25 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
26 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
27 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
28 daily activities and obtaining the full enjoyment of life; has sustained and will continue



1 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
2 to incur expenses for medical and psychological treatment, therapy, and counseling.  
3 As a proximate result of these injuries, Plaintiff has suffered general and special  
4 damages in an amount in excess of the jurisdictional minimum of this Court.

5  
6 **TENTH CAUSE OF ACTION**

7 **NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS**

8 **(Against All Defendants)**

9 65. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
10 set forth herein.

11 66. Defendants knew or should have known that their failure to exercise reasonable  
12 care in the selection, approval, employment, supervision and transfer to other dioceses  
13 or archdioceses of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
14 agents, and their failure to warn anyone of the propensities of these men, would cause  
15 severe emotional distress to Plaintiff and other children exposed to Flickinger. Because  
16 of the foreseeability of sexual assaults by Fr. Flickinger and Defendants' other  
17 pedophilic and/or ephebophilic agents against Plaintiff and other children, Defendants  
18 breached their duty of care in engaging in the conduct referred to in the preceding  
19 paragraphs. Defendants' conduct was wanton and reckless and/or evidenced a  
20 conscious disregard for the rights and safety of Plaintiff and other children.

21 67. The San Jose Defendants knew or should have known that their failure to  
22 exercise reasonable care in providing adequate supervision to Plaintiff and other  
23 children in their custody and control, despite the fact they knew or should have known  
24 of the threat to children posed by Fr. Flickinger and Defendants' other pedophilic and/or  
25 ephebophilic agents, would cause Plaintiff severe emotional distress. Defendants also  
26 knew or should have known that their failure to disclose information relating to sexual  
27 misconduct of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
28 agents as described herein would cause Plaintiff and other children exposed to

1 Flickinger severe emotional distress and subject them to further assaults. Because of  
2 the foreseeability of sexual assaults by Fr. Flickinger and Defendants' other pedophilic  
3 and/or ephebophilic agents against Plaintiff and other children, the San Jose  
4 Defendants breached their duty to exercise reasonable care in failing to provide  
5 adequate supervision to Plaintiff and other children in their custody and control.  
6 Additionally, Defendants breached their duty to exercise reasonable care in failing to  
7 disclose information to Plaintiff, her family, and the general public relating to sexual  
8 misconduct of Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
9 agents.

10 68. Finally, Defendants knew or should have known that their creation and  
11 continuance of the Public Nuisance set forth in the preceding paragraphs would cause  
12 Plaintiff and other children severe emotional distress. Because of the foreseeability of  
13 sexual assaults by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
14 agents against Plaintiff and other children as a result of this conduct, Defendants  
15 breached their duty of care in creating and continuing the Public Nuisance referred to  
16 in the preceding paragraphs.

17 69. Plaintiff experienced and continues to experience severe emotional distress  
18 resulting in bodily harm.

19 70. As a result of the above-described conduct, Plaintiff has suffered, and continues  
20 to suffer great pain of mind and body, shock, emotional distress, physical  
21 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
22 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
23 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
24 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
25 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
26 to incur expenses for medical and psychological treatment, therapy, and counseling.  
27 As a proximate result of these injuries, Plaintiff has suffered general and special  
28 damages in an amount in excess of the jurisdictional minimum of this Court.

1 In addition, when Plaintiff finally discovered the negligent misrepresentations of  
2 the San Jose Defendants, and continuing thereafter, Plaintiff experienced extreme and  
3 severe mental and emotional distress that Plaintiff had been the victim of the San Jose  
4 Defendants' negligent misrepresentations; that Plaintiff had not been able to help other  
5 minors being molested because of the negligent misrepresentations; and that Plaintiff  
6 had not been able because of the negligent misrepresentations and failure to disclose  
7 to receive timely medical treatment needed to deal with the problems Plaintiff had  
8 suffered and continues to suffer as a result of the sexual abuse.

9  
10 **ELEVENTH CAUSE OF ACTION**

11 **FRAUD AND DECEIT**

12 **(Against The San Jose Defendants)**

13 71. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
14 set forth herein.

15 72. Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents held  
16 themselves out to Plaintiff as Roman Catholic Priests, religious brothers, religious  
17 instructors, counselors, school administrators, school teachers, surrogate parents,  
18 spiritual mentors, emotional mentors, medical services providers and/or care givers,  
19 and/or other authority figures. Fr. Flickinger and Defendants' other pedophilic and/or  
20 ephebophilic agents represented to Plaintiff and Plaintiff's parents that they would  
21 counsel and guide Plaintiff with her educational, spiritual, and/or emotional needs.

22 73. These representations were made by Fr. Flickinger and Defendants' other  
23 pedophilic and/or ephebophilic agents with the intent and for the purpose of inducing  
24 Plaintiff and Plaintiff's parents to entrust the educational, spiritual, sexual, emotional  
25 and physical well being of Plaintiff with Fr. Flickinger and Defendants' other pedophilic  
26 and/or ephebophilic agents.

27 74. Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents  
28 misrepresented, concealed or failed to disclose information relating to their true

1 intentions to Plaintiff and Plaintiff's parents when they entrusted Plaintiff to his care,  
2 which were to sexually molest and abuse Plaintiff. Plaintiff justifiably relied upon Fr.  
3 Flickinger's and Defendants' other pedophilic and/or ephebophilic agents'  
4 representations.

5 75. Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents were  
6 employees, agents, and/or representatives of the San Jose Defendants. At the time  
7 they fraudulently induced Plaintiff and Plaintiff's parents to entrust the care and physical  
8 welfare of Plaintiff to Fr. Flickinger and Defendants' other pedophilic and/or  
9 ephebophilic agents, Fr. Flickinger and Defendants' other pedophilic and/or  
10 ephebophilic agents were acting within the course and scope of their employment with  
11 the San Jose Defendants.

12 76. The San Jose Defendants are vicariously liable for the fraud and deceit of Fr.  
13 Flickinger and the San Jose Defendants' other agents.

14 77. As a result of the above-described conduct, Plaintiff has suffered, and continues  
15 to suffer great pain of mind and body, shock, emotional distress, physical  
16 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
17 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
18 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
19 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
20 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
21 to incur expenses for medical and psychological treatment, therapy, and counseling.  
22 As a proximate result of these injuries, Plaintiff has suffered general and special  
23 damages in an amount in excess of the jurisdictional minimum of this Court.

24 78. In addition, when Plaintiff finally discovered the fraud of the San Jose  
25 Defendants, and continuing thereafter, Plaintiff experienced recurrences of the above-  
26 described injuries. In addition, when Plaintiff finally discovered the fraud of the San  
27 Jose Defendants, and continuing thereafter, Plaintiff experienced extreme and severe  
28 mental and emotional distress that Plaintiff had been the victim of the San Jose

1 Defendants' fraud; that Plaintiff had not been able to help other minors being molested  
2 because of the fraud; and that Plaintiff had not been able because of the fraud to  
3 receive timely medical treatment needed to deal with the problems Plaintiff had suffered  
4 and continues to suffer as a result of the molestations.

5  
6 **TWELFTH CAUSE OF ACTION**

7 **PREMISES LIABILITY**

8 **(Against The San Jose Defendants)**

9 79. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
10 set forth herein.

11 80. At all times herein mentioned, Defendant San Jose Bishop and/or Defendant  
12 Parish and/or Defendant School were in possession of the property where the Plaintiff  
13 was groomed and assaulted by Fr. Flickinger, and had the right to manage, use and  
14 control that property.

15 81. At all times herein mentioned, Defendant San Jose Bishop and/or Defendant  
16 Parish and/or Defendant School knew that Fr. Flickinger and Defendants' other  
17 pedophilic and/or ephebophilic agents had a history of committing sexual assaults  
18 against children, and that any child at, among other locations in Santa Clara County,  
19 Defendant Parish and Defendant School was at risk to be sexually assaulted by Fr.  
20 Flickinger and Defendants' other pedophilic and/or ephebophilic agents.

21 82. The San Jose Defendants knew or should have known that their agents at  
22 Defendant Parish and Defendant School had a history of grooming of and/or sexual  
23 assaults against children committed by Fr. Flickinger and/or Defendants' other  
24 pedophilic and/or ephebophilic agents and that any child at, among other locations in  
25 Santa Clara County, Defendant Parish and Defendant School, was at risk to be  
26 sexually assaulted. It was foreseeable to the San Jose Defendants that Fr. Flickinger  
27 and Defendants' other pedophilic and/or ephebophilic agents would sexually assault  
28 children if they continued to allow Fr. Flickinger and/or Defendants' other pedophilic

1 and/or ephebophilic agents to teach, supervise, instruct, care for, and have custody and  
2 control of and/or contact with children.

3 83. At all times herein mentioned, the San Jose Defendants knew or should have  
4 known Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic agents were  
5 repeatedly committing sexual assaults against children.

6 84. It was foreseeable to the San Jose Defendants that the sexual assaults being  
7 committed by Fr. Flickinger and Defendants' other pedophilic and/or ephebophilic  
8 agents would continue if the San Jose Defendants continued to allow Fr. Flickinger and  
9 Defendants' other pedophilic and/or ephebophilic agents to teach, supervise, instruct,  
10 care for, conduct physical examinations of, and have custody of and/or contact with  
11 young children.

12 85. Because it was foreseeable that the sexual assaults being committed by Fr.  
13 Flickinger and Defendants' other pedophilic and/or ephebophilic agents would continue  
14 if the San Jose Defendants continued to allow them to teach, supervise, instruct, care  
15 for, conduct physical examinations of, and have custody of and/or contact with young  
16 children, the San Jose Defendants owed a duty of care to all children, including  
17 Plaintiff, exposed to Fr. Flickinger and/or Defendants' other pedophilic and/or  
18 ephebophilic agents. The San Jose Defendants also owed a heightened duty of care  
19 to all children, including Plaintiff, because of their young age.

20 86. By allowing Fr. Flickinger and/or Defendants' other pedophilic and/or  
21 ephebophilic agents to teach, supervise, instruct, care for, conduct physical  
22 examinations of, and have custody of and/or contact with young children, and by failing  
23 to warn children and their families of the threat posed by Fr. Flickinger and Defendants'  
24 other pedophilic and/or ephebophilic agents, the San Jose Defendants breached their  
25 duty of care to all children, including Plaintiff.

26 87. The San Jose Defendants negligently used and managed Defendant Parish and  
27 Defendant School, and created a dangerous condition and an unreasonable risk of  
28 harm to children by allowing Fr. Flickinger and Defendants' other pedophilic and/or

1 ephebophilic agents to teach, supervise, instruct, care for, conduct physical  
2 examinations of, and have custody of and/or contact with young children at, among  
3 other locations, Defendant Parish and Defendant School.

4 88. As a result of the dangerous conditions created by the San Jose Defendants,  
5 numerous children were sexually assaulted by Fr. Flickinger and Defendants' other  
6 pedophilic and/or ephebophilic agents.

7 89. The dangerous conditions created by the San Jose Defendants were the  
8 proximate cause of Plaintiff's injuries and damages.

9 90. As a result of these dangerous conditions, Plaintiff has suffered, and continues  
10 to suffer great pain of mind and body, shock, emotional distress, physical  
11 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
12 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
13 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
14 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
15 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
16 to incur expenses for medical and psychological treatment, therapy, and counseling.  
17 As a proximate result of these injuries, Plaintiff has suffered general and special  
18 damages.

19  
20 **THIRTEENTH CAUSE OF ACTION**

21 **CHILDHOOD SEXUAL ABUSE**

22 **(Against Defendant Father Don Flickinger)**

23 91. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
24 set forth herein.

25 92. While Plaintiff was a minor and in the custody and/or under the control and  
26 supervision of Defendant Flickinger, Defendant Flickinger intentionally sexually  
27 molested and assaulted Plaintiff.

28 93. As a result of the above-described conduct, Plaintiff has suffered, and continues

1 to suffer great pain of mind and body, shock, emotional distress, physical  
2 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
3 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
4 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
5 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
6 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
7 to incur expenses for medical and psychological treatment, therapy, and counseling.  
8 As a proximate result of these injuries, Plaintiff has suffered general and special  
9 damages in an amount in excess of the jurisdictional minimum of this Court.

10 94. In doing the acts complained of herein, Defendant Flickinger acted intentionally,  
11 maliciously and with conscious disregard for the rights of Plaintiff, thereby entitling  
12 Plaintiff to punitive damages in an amount to be established at trial.

13  
14 **FOURTEENTH CAUSE OF ACTION**  
15 **SEXUAL BATTERY (CIVIL CODE § 1708.5)**  
16 **(Against Defendant Flickinger)**

17 95. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully  
18 set forth herein.

19 96. In doing the acts of childhood sexual abuse specified herein above, Defendant  
20 Flickinger intentionally touched an intimate part of Plaintiff in a sexually offensive  
21 manner with the intent to harm or offend her, intentionally touched Plaintiff in a sexually  
22 offensive manner with an intimate part of his body with the intent to harm or offend her,  
23 and further acted in such a manner as to cause Plaintiff to have an imminent  
24 apprehension of such contact. Plaintiff did not consent and could not legally have  
25 consented to be so touched by Defendant Flickinger. Plaintiff was harmed and  
26 offended by his conduct.

27 97. As a result of the above-described conduct, Plaintiff has suffered, and continues  
28 to suffer great pain of mind and body, shock, emotional distress, physical



1 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,  
2 humiliation, and loss of enjoyment of life; has suffered and continues to suffer  
3 spiritually; was prevented and will continue to be prevented from performing Plaintiff's  
4 daily activities and obtaining the full enjoyment of life; has sustained and will continue  
5 to sustain loss of earnings and earning capacity; and/or has incurred and will continue  
6 to incur expenses for medical and psychological treatment, therapy, and counseling.  
7 As a proximate result of these injuries, Plaintiff has suffered general and special  
8 damages in an amount in excess of the jurisdictional minimum of this Court.

9 98. In doing the acts complained of herein, Defendant Flickinger acted intentionally,  
10 maliciously and with conscious disregard for the rights of Plaintiff, thereby entitling  
11 Plaintiff to punitive damages in an amount to be established at trial. Defendant  
12 Flickinger is further liable to Plaintiff for punitive damages pursuant to Civil Code §  
13 1708.5(b).

14  
15 WHEREFORE, Plaintiff prays for general and special damages; punitive damages from  
16 Fr. Flickinger, injunctive relief; attorney's fees and costs; statutory/civil penalties  
17 according to law; and such other relief as the court deems appropriate and just.

18  
19 DATE: March 20, 2012

NYE, PEABODY, STIRLING, HALE &  
MILLER, LLP

20  
21 By: 

22 DAVID L. NYE  
23 TIMOTHY C. HALE  
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**JURY DEMAND**

Plaintiff demands a jury trial on all issues so triable.

DATE: March 20, 2012

NYE, PEABODY, STIRLING, HALE &  
MILLER, LLP

By:



DAVID L. NYE  
TIMOTHY C. HALE