

as Bishop of the Catholic Diocese of Fort Worth, his Predecessors and Successors and prays for damages as follows¹:

I
DISCOVERY CONTROL PLAN

1. As required by TEX. R. CIV. P. 190.1, Plaintiff files this lawsuit under a Level 3 Discovery Control Plan (TEX. R. CIV. P. 190.4).

II
PARTIES

2. Plaintiff John Doe 117 (“Doe”) currently resides in Cheney, Spokane County, Washington. He is an adult male who, in accordance with Section 30.013 of the Texas Civil Practices & Remedies Code, is pursuing this matter through a pseudonym to protect his identity as a victim of childhood sexual abuse. As such, he is not required to provide identifying information as part of this pleading and thus avails himself of this protection. Plaintiff’s identity is known to Defendants. Doe 117 was a minor resident of Wichita Falls, Wichita County, Texas, at the time of the sexual abuse alleged herein, and a Catholic student in Notre Dame Middle-High School, a diocesan institution of the Fort Worth Diocese, located in Wichita Falls.

3. Defendant, the Catholic Diocese of Fort Worth which purports to be a religious organization, was the employer or ostensible employer of Father John H. Sutton (now deceased), also known as Hugh John Sutton, Hugh Mills Sutton and Father John (“Father Sutton” or

¹ Both Defendants, the Catholic Diocese of Fort Worth and Bishop Michael F. Olson, in his official capacity as Bishop of the Catholic Diocese of Fort Worth, his predecessors and successors, shall collectively be referred to herein for all purposes as “Diocese” or “Fort Worth Diocese” or “Bishop” or “Bishops.”

“Sutton”), at the time of the sexual abuse and sexual exploitation of this Plaintiff. Through its Bishop, the Fort Worth Diocese granted priestly faculties to Father Sutton to serve as teacher and chaplain at Notre Dame Middle-High School (“Notre Dame”) in Wichita Falls, Texas, from 1984 into 1992. The Diocese, in the person of its current Bishop, may be served at the Fort Worth Diocese’s Chancery Office, 800 West Loop 820 South, Fort Worth, Texas 76108.

4. Defendant Michael F. Olson (“Olson”), in his official capacity as current Bishop of the Fort Worth Diocese, His Predecessors and Successors, is a natural person and resident of Tarrant County, Texas. Based upon information and belief, for some time in 1991 and 1992, Olson was a seminarian stationed at Our Lady Queen of Peace Church near Notre Dame Middle-High School. Seminarian Olson personally knew Sutton, Doe and his parents. During this time, he frequented the family’s home for meals. He may now be served at the Fort Worth Diocese’s Chancery Office, 800 West Loop 820 South, Fort Worth, Texas 76108.

III

JURISDICTION AND VENUE

5. Pursuant to Texas Rules of Civil Procedure 47, Plaintiff seeks relief for damages within the jurisdictional limits of this court. Pursuant to Texas Rule of Civil Procedure 47(c), Plaintiff pleads that the monetary relief sought by Plaintiff is more than \$1,000,000.00.

6. In this case, jurisdiction and venue are proper in Tarrant County pursuant to Texas Civil Practice & Remedies Code § 15.002(3).

IV

FACTUAL BACKGROUND AND SEXUAL ABUSE OF DOE

7. Father Sutton was born on June 26, 1926, in Jefferson County, New York. He was ordained a Catholic priest for the Diocese of Pueblo [Colorado] in 1956. In addition to being assigned to Wichita Falls in the Fort Worth Diocese, Sutton apparently worked as a priest, chaplain and teacher in Dioceses and Archdioceses in various states, including Arkansas (Little Rock), California (Los Angeles, San Diego), Mississippi (Biloxi), North Dakota (Fargo) and Ohio (Toledo), all notably removed from his diocese of ordination in Colorado; overseas (Guam); and in the U.S. Navy. He died on September 11, 2004, and is buried in Ottawa County, Ohio.

8. In 1990, Doe was a middle-school student (7th grader) at Notre Dame Middle-High School (“Notre Dame”), situated within Our Lady Queen of Peace Parish in Wichita Falls, Texas. Father Sutton was employed by the Diocese and its Bishop as the school’s Chaplain. Sutton was also Doe’s Confessor and History teacher. Ronald M. Staley was the Principal of the school during the time of the abuse complained of herein: in addition, he was sometime a History and Computer teacher. Based upon information and belief, Sutton and Staley knew each other prior to their working together at Notre Dame. The school itself was operated and controlled by the Diocese and its then-Bishop, Joseph P. Delaney.

9. Doe’s parents entrusted their son to the care and custody of the Diocese’s Notre Dame Middle-High School. The Diocese therefore had a heightened common-law duty to act *in locus parentis* with regard to the welfare and care of Doe, including the duty to keep him safe from harm. However, the Diocese and its agents (Notre Dame administration, faculty and staff) failed to protect Doe from continual sexual assaults by Father Sutton.

10. During the time period when Sutton was Doe's Confessor and History teacher, he accused Doe of copying an assignment from an encyclopedia. The boy's "penance" was to "counsel" and pray with Father Sutton during his lunch hour in the small chapel located inside the school building. For at least two, sometimes three times a week, the priest went into the lunch-room, then, in full view of students and faculty, placed his hands on Doe's shoulders and led the boy to the chapel and into its sacristy, where he "disciplined" him by sexually assaulting him. This pattern soon developed into a sadistic ritual of sexual abuse.

11. During these penance-and-punishment sessions, Father Sutton, standing over Doe while he knelt in prayer, began groping the boy's genitals, both inside and outside his clothes. The sexual assaults soon escalated: Father John masturbated him and performed oral sex upon him and, among other deviant sex acts, eventually anally penetrated him with various menacing "sex toys." (Sutton carried them in black bags. These tools of torture—there were three, two of which were black and silver—he kept within a black velvet bag which, in turn, was enclosed in an outer black bag.) Doe also recalls hearing the sound of a camera clicking during some incidents of abuse. Sutton even stuffed a towel in Doe's mouth to prevent his uncontrollable, agonizing screams from being heard. "Shut up," Sutton threatened the child, "or it will be worse."

12. Sutton told Doe that his suffering these excruciating, humiliating abuses were testimonies to God of his repentance for having plagiarized, and pleased Him. Nevertheless, he warned him not to tell anyone because no one would believe him. For good measure he threatened: "I have the power to ruin your life."

13. As the sexual assaults continued into his 8th and 9th grades, Doe commented to a classmate, whose mother was the school counselor, “Father is a little friendly,” a cryptic, textbook understatement warranting inquiry. Yet the school counselor did not report to law enforcement. She did not tell Doe’s parents, as she was bound by morals and ethics to do. But she may well have informed her administrative superiors, because soon afterward Staley, Sutton and Mrs. Kay Burrell, the Academic Dean and Religion teacher, abruptly removed Doe from class, held him in an office against his will and falsely accused him of selling LSD at the school. These Notre Dame administrators, faculty members and religious guides berated, bullied, intimidated and threatened the young boy, who had been and still was being berated, bullied, intimidated, threatened—and sexually assaulted by at least one of them. He begged for his parents, but they refused both to summon them or to release him, then threatened to throw him in jail unless he confessed to their trumped-up charge. So Doe, emphatically convinced of Father Sutton’s warning and threat—“It will be worse” and “I have the power to ruin your life”—was coerced into confessing to something he had not done. Assuredly, he was in for more special penitential punishment as meted out by God’s exacting instrument of correction, Chaplain Sutton. His faith was thus crucially challenged.²

14. After this incident as described above, Staley, Sutton, Burrell and other faculty at Notre Dame made Doe’s life hell. The sadistic sexual abuse by Chaplain Sutton, ostensibly acting as God’s vicious and relentless enforcer empowered with salvific directive, continued until

² “The clergyman is a God figure. You all know that. How many children will look at a priest or sister and say, ‘Ooh, there’s God.’ The victim’s relationship with God and with the Church can be disastrously affected forever.” (Rev. Michael A. Jamail: Sexuality and the Clergy, Texas Catholic Conference, Dept. of Judicial Vicars, 11th Annual Spring Conference, March 3-4, 1986).

he was transferred in 1992, coincidentally, perhaps, the same year that his collaborators, Staley and Burrell, also departed Notre Dame.

15. In about September of 2013, Doe had a nervous breakdown and was admitted to a psychiatric hospital on an emergency basis. Soon afterward, he began to suffer debilitating panic attacks as he, for the first time since they occurred, recalled disturbing images of the serial rapes and sadistic abuses by Sutton.

16. Good, trusting Catholic that he had somehow remained, Doe quickly contacted his local parish priest, "Father Miguel," in the Spokane Diocese. Doe trusted and believed that the Church, in response, would "do the right thing" and help him attain peace and closure and would care for him. Unfortunately, his trust was again betrayed.

17. Doe wanted what all victims of sexual abuse want: to be believed, to know the truth about their abusers and, importantly, to learn if others were victimized by the same abusers. Spokane church officials soon put Doe in contact with the Fort Worth Diocese's Victim Assistance Coordinator, Judy Locke. To help himself, Doe also began intensive counseling and psychiatric care. These uncontrollable, unwelcome images and memories of Sutton's rapes increasingly flooded his sleeping and waking hours and wreaked havoc in his life.

18. At first Locke professed sympathy with Doe, even engaging in telephonic praying with him. She lavished praise on him for being courageous and for not being "one of those people who sued the church," or some such self-serving phrasing. With every subsequent conversation, she lulled Doe into trusting that the Diocese was "investigating" Sutton and into believing that it was sympathetically addressing Doe's complaint and that she would keep him informed. When Doe asked about Sutton's background, she told him he had been a priest of the

Pueblo Diocese for a long time and had a good record with them. She represented that there were no other victims of Father John.

19. Around March of 2014, the Diocese published an obscure notice announcing to Notre Dame that the Diocese had received an allegation of sexual abuse by Father Sutton (presumably from Doe) and that it was found to have “a semblance of truth.” Upon information and belief, the Diocese did not display this notice on its website nor send out a media release as it had done in other similar cases. Meanwhile, Locke told Doe that Bishop Olson, himself, wished to be in touch with him because of his personal relationship with him and his family. The needy, believing Doe felt incredibly honored and touched by Olson’s remembrance and attention. He hoped above all that the Bishop would pray with him at Mass, and thus help him heal and bring him peace, all of which Olson indicated he would. They exchanged several telephone calls, during which the Bishop assured Doe that he believed him and, intoned how happy he was that Doe had chosen not to hire a lawyer to sue the Diocese, but to meet with him instead.

20. About September of 2014, Bishop Olson told Doe he would travel to Washington State to meet with him in person. Shortly before the date had been arranged, Olson asked Doe if he minded his bringing someone with him to the meeting. Trusting the Bishop, Doe readily agreed. The Bishop neglected to tell Doe that the person to accompany him was an experienced Fort Worth police officer and Diocesan Liaison for the Knights of Columbus, nor that the purpose of his meeting with Doe was to take from him an evidentiary, recorded audio-statement. This “volunteer,” as he introduced himself (–volunteer for what?–), consulted with Judy Locke,

who had manipulated Doe through prayer and praise into not retaining an attorney and not suing the Diocese so that this preemptive strategy could be put in motion.

21. The naive and trusting Doe did not learn the real identity of this “volunteer” nor his and his Bishop’s motive until shortly before the filing of this case. Doe’s responses to a virtual interrogation were taken without the benefit of a lawyer present (since he was led to believe he did not need one) and for fraudulent purposes: to limit or deny any potential civil claims Doe would have and to elicit support for the Diocese’s legal defenses in the event he were to file a lawsuit. In effect, their intent was to string him along and ultimately to silence him until the expiration of the statutes of limitations. Had Doe known the motive of Bishop Olson and his specially qualified “volunteer,” he would never have agreed to give a recorded statement, certainly not without his own lawyer present to protect his present and future interests.

22. At a busy local Starbucks, after giving there in that very public place an emotionally grueling recorded account of the sexual assaults and abuses by Father Sutton, Doe asked Bishop Olson to go to Mass with him and pray with him as he had led Doe to believe he would. But having got what he came for, Olson refused, saying he was “too busy,” but then promising Doe he would hear back from him in a few weeks. Doe never heard another word from the Bishop of Fort Worth, the one-time seminarian who had dined so often in his parents’ home during the very period of Father Sutton’s brutal sexual assaults.

23. During this trip to Spokane, Bishop Olson asked Doe if he could meet with his mother to console her, too. Like her son, the unsuspecting mother, who lived with him, met at Starbucks with the Bishop she had once welcomed into her home as a student, and with his accompanying agent. They really wanted to ask her, they shortly told her, about her son,

pointedly his abuse by Sutton. They did not tell her that she was being recorded secretly, a criminal violation of Washington State law under *Revised Code of Washington 9.73.030*. Violating this criminal statute is a Gross Misdemeanor that can subject the violators, Olson and his agent to criminal penalties. Again, the sole purpose of this illegal taping of the mother of Doe was to use her statements to defeat any potential civil claims her son might justly have. In short, in their hope of denying him justice, she was being tricked and betrayed into testifying against her own abused and damaged son. Mrs. Doe and her son did not learn of this reprehensible deceit and the existence of the unlawful audio recording until shortly before this suit was filed. As a trusting child Doe was betrayed and victimized by an ordained Chaplain: as a trusting adult betrayed and then re-victimized by his Bishop.³

V

SUMMARY OF CLAIMS AGAINST DIOCESE

24. Plaintiff alleges Defendant Diocese, and by its Bishops, knew or should have known that Sutton was psychologically unfit in that he had a psycho-sexual disorder characterized by perverse sexual attraction to adolescent boys when he was negligently assigned as a teacher and Chaplain in good standing to work at the Diocese's Notre Dame Middle-High School. The Diocese's actions and inactions, in negligently selecting, hiring, retaining and supervising Sutton by assigning him as a Chaplain and teacher, gave him the disguise, position, power, access, opportunity and means to sexually molest boys, as he did Doe, repeatedly over time.

³ "The damage caused by sexual abuse of minors is devastating and long-lasting...The loss of trust becomes even more tragic when its consequence is a loss of faith that we have a sacred duty to foster." *Preamble, Charter for the Protection of Children and Young People*, *United States Conference of Catholic Bishops 2002*.

25. Doe alleges that as a direct result of the negligence of Defendant, Father Sutton was afforded continual opportunities to physically and sexually exploit, assault and abuse him.

26. Religious organizations are granted special privileges and immunities by our society. As a purported religious organization, the Diocese, directed by its Bishop, was in a special fiduciary relationship with Doe and his parents, especially while the child was a student at Notre Dame. The Diocese breached its fiduciary duty not only to Doe but to his parents as well. This knowing, comprehensive breach of fiduciary duty proximately caused physical, psychological and spiritual injury to Plaintiff, contrary to what it offered and promised Doe's parents and within their mutual and special relationship.

27. Notre Dame, a diocesan school, also owed a duty of care by acting *in loco parentis*. In particular, the Diocese had care, custody and control of Doe and responsibility for his education, health and safety while he was attending school. It owed Plaintiff the highest duty of trust and confidence and was obligated to act in his best interest. Regardless of its presumptive moral and legal duty, Defendant knowingly violated the common-law duty of *in loco parentis* and its overall fiduciary duty to Plaintiff, as a member of the school and of the Diocese, to both of which the parents of Doe contributed financially in the form of school tuition and charitable contributions. Defendant consciously and unconscionably breached Plaintiff's trust when it failed to act with the highest degree of trust and confidence to protect him from the known risks posed by its predatory priest.

28. Defendant committed fraud that proximately caused Plaintiff's damages. They solicited and encouraged the faithful to enroll their children in the Diocese's school and to

regularly tithe, all the while representing that the Diocese provided a safe, wholesome, nurturing, moral and religious environment for them and their children. These representations made to Doe's parents were material in their decision to allow their son to attend Notre Dame. These representations were false: Notre Dame was not safe. Far from it. Defendant committed fraud when it failed to disclose Father Sutton's sexual proclivities. In consequence, Sutton was enabled and allowed to sexually abuse Doe and likely other young boys.

29. The Diocese, in conjunction with its agents at Notre Dame, failed to report Sutton's child sexual abuse, as required by law, leaving Doe subject to tormenting and bullying by administration and faculty there while the sexual assaults upon the boy by his Chaplain continued.

30. The Diocese and others known and currently unknown to Plaintiff engaged in a conspiracy to cover up the sexual abuse by Sutton and likely other employees.

31. Defendant was under the duty to disclose to Doe and Doe's parents the extent of the problem of sexual abuse of children by Roman Catholic clergy such as Father Sutton and of the severe psychological problems that would impact their victims if actual sexual abuses and subsequent injuries were not properly addressed. Instead, after they knew or should have known Sutton was likely to abuse or likely was abusing Plaintiff and other youngsters, Defendant fraudulently concealed this information, thereby allowing Father John continued access to children and continual indulgence of his own perverse gratification.

32. Plaintiff pleads intentional infliction of emotional distress against the Diocese.

33. Plaintiff asserts that Defendant is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 302B, under the legal doctrine of negligent assumption of risk of intentional or criminal conduct.

An act or an omission may be negligent if the actor realizes or should realize that it involves an unreasonable risk of harm to another through the conduct of the other or a third person which is intended to cause harm, even though such conduct is criminal.

Restatement (Second) of Torts, Section 302B.

34. Plaintiff asserts that Defendant is liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 311, under the legal doctrine of negligent misrepresentation involving risk of physical harm.

- (1) One who negligently gives false information to another is subject to liability for physical harm caused by action taken by the other in reasonable reliance upon such information, which such harm results
 - (a) to the other, or
 - (b) to such third persons as the actor should expect to be put in peril by the action taken.
- (2) Such negligence may consist of failure to exercise reasonable care
 - (a) in ascertaining the accuracy of the information, or
 - (b) in the manner in which it is communicated.

Restatement (Second) of Torts, Section 311.

35. Plaintiff asserts that the statute of limitations is deferred, tolled and/or has not expired for Plaintiff under the legal theories of: disability of unsound mind, fraud and fraudulent concealment (as referenced above), quasi and equitable estoppel and the discovery rule.

36. Defendant is also liable to Plaintiff under a theory of ratification due to its knowledge relative to Father Sutton's psychological unfitness prior to and/or during the time that he was sexually assaulting Plaintiff and because of its failure to act to protect or to rescue Plaintiff.

37. Plaintiff further pleads Restatement 2d of Torts section 317 as to all Defendants:

A master is under a duty to exercise reasonable care so to control his servant while acting outside the scope of his employment as to prevent him from intentionally harming others or from so conducting himself as to create an unreasonable risk of bodily harm to them if:

a) the servant

1) is upon the premises in possession of the master or upon which the servant is privileged to enter only as his servant, or

2) is using a chattel of the master, and

b) the master

1) knows or has reason to know that he has the ability to control his servant, and

2) knows or should know of the necessity and opportunity for exercising such control.

38. Plaintiff pleads Defendant acted at the time and on occasions in question with heedless and reckless disregard for the safety and welfare of Plaintiff, which disregard was the result of conscious indifference to the rights, welfare and safety of Plaintiff, John Doe 117. In consequence, Plaintiff pleads that Defendant's conduct constituted gross negligence.

VI**CAUSES OF ACTION AGAINST DEFENDANT DIOCESE**

39. Defendant Diocese negligently retained Father Sutton and assigned him to a position of trust, confidence and authority as a school chaplain and teacher in direct contact with minor boys although it knew or should have known Sutton was psychologically unfit and unsuited for such assignments. Nevertheless, it recklessly entrusted Doe 117, as well as other adolescent males, to Father Sutton's care, counseling and predation. Consequently, Plaintiff relies on Sutton's mental and/or emotional condition as part of his claims. (See Texas Rules of Evidence 509(e)(4) and 510(d)(5).)

40. The sexual abuse and sexual exploitation in this case arose from Father Sutton's exercise of authority and power over and access to victims and their families created by his employment and position as a Catholic priest and teacher in good standing by Defendant Diocese. Plaintiff thus pleads vicarious liability under the doctrine of Respondeat Superior in that Defendant Diocese, presided over by its Bishop, knew or should have known of the sexual misconduct and continuing dangerous propensities of Father Sutton and in that Father Sutton's consequent injurious sexual actions thus were clearly foreseeable. The authority of the Bishop over his priests exceeds the customary employer/employee relationship. Defendant Diocese is thus vicariously liable for all actions of Father Sutton as described above as well as its own abandonment of prudence, indulgence in willful blindness and abuse of authority through omission and commission that resulted in injury to Plaintiff.

41. Defendant Diocese, guided by its Bishops, is liable to Plaintiff under a theory of ratification due to its knowledge related to Father Sutton's sexual misconduct prior to and during the time that he was assaulting Plaintiff, and its failure to act to protect him.

42. The Bishop failed to provide reasonable monitoring and supervision of Father Sutton. Yet, he retained overall responsibility for all aspects of religious life in the Diocese, including the following duties: (a) to have inquired and investigated before granting faculties to Father Sutton; (b) to have supervised, evaluated, monitored, inspected and overseen all activities of Father Sutton; (c) to have investigated, monitored and supervised Father Sutton as a chaplain and teacher in a diocesan school; (d) to have revoked Father Sutton's faculties upon early and repeated notice that Father Sutton was decidedly unsuited for the position for which he was hired and to which he was assigned; and (e) to have actually conducted an investigation of complaints against Father Sutton. Defendant Diocese was negligent in relation to each of these duties. Had it not been negligent, Father Sutton would never have had the opportunity, means and power to sexually assault this Plaintiff.

43. Prior to Father Sutton's sexual abuse of Plaintiff, the Bishop of Fort Worth failed to investigate reports of his misconduct or to act on knowledge that he was unsuitable for a position affording access to boys and refused to respond responsibly by removing him from positions as chaplain and teacher that afforded him authoritative contact with potential victims.

44. The Bishop failed to warn Plaintiff, his family or any of the Catholic faithful in the Diocese about Sutton's dangerous sexual propensities and his being psychologically unfit, despite their knowledge and notice of these dangerous proclivities. (Additionally, Defendant

should have ensured that Father Sutton was not transferred to another parish with the additional opportunities to abuse other boys, but did not do so.)

45. Defendant Diocese also committed fraud that proximately caused Plaintiff's damages when it failed to disclose Father Sutton's past, which warned that he was psychologically unfit and dangerous, but instead misrepresented him to his students and their families, including the Plaintiff and his parents, to be a celibate, caring priest and teacher in good standing.

46. Plaintiff also alleges that Defendant Diocese failed to timely apprise him and his family and the local communities in Wichita Falls of Father Sutton's psychologically deviant and predatory nature. Thus, the Diocese's representation that Father Sutton was not dangerous to adolescent boys placed Plaintiff and other male children in the Diocese in peril. Plaintiff pleads that it failed to exercise reasonable care and thus misrepresented and gave false information with the intent to mislead, which proximately caused harm to Plaintiff since he and his parents reasonably relied upon the false representation that Father Sutton was suitable for a position involving access to minors while it knew or should have known that, to the contrary, he posed a grave and imminent risk.

47. Defendant Diocese concealed its knowledge of the files documenting the criminal sexual activities of other such predatory priests for the purpose of preventing Plaintiff, other victims and the public from learning the cause of their injuries and the existence of just claims against it, and from learning of its failure to supervise, investigate and remove Father Sutton from his position of power over and access to the unwitting victim, John Doe 117. The Diocese used deception to conceal Father Sutton's past misconduct as well as that of other predatory

Fort Worth priests, such as James Hanlon, William Hoover, Philip Magaldi, Gilbert Pansza, James Reilly, Rudolf Renteria, John Howlett, Thomas Teczar, Vincent Inametti, Father Do, Gerald Scholl, William Paiz, Joseph Tu, Henry Herrera, Bede Mitchel and others currently unknown to Plaintiff, and to conceal its own failure to properly assign, supervise, investigate, report and remove Father Sutton because of his scandalous, damaging misconduct. Indeed, in this case, the agents of the Diocese and the Bishop himself lulled the trusting victim into giving recorded statements without the benefit of legal representation in order to deprive Plaintiff of his constitutional right to access the court system, then illegally, secretly and shamefully taped his mother's responses, intent on using her words against her own injured son. Plaintiff reasonably relied upon Defendant's deceptions, which he failed to discover despite due diligence until recently.

48. Plaintiff alleges that the Diocese breached its fiduciary duty, including the heightened duty to Plaintiff, a student, *in locus parentis*, by failing to disclose its knowledge of the criminal activities, past and present, of other clerics within the Fort Worth Diocese who abused minors and vulnerable persons. This duty includes good faith, fair dealing and disclosure. Plaintiff did not and could not in the exercise of reasonable diligence learn of this breach of duty due to false representations, material misstatements of fact and omission of material fact by silence.

49. During the existence of the fiduciary relationship plead herein, Defendant actively and constructively stated and/or represented numerous falsehoods, including falsely representing that Father Sutton was a man of good moral character and fit to be a priest, a holy man who could be entrusted with the care, counseling, teaching, and instruction of children. These

representations, among others outlined herein, were false and misleading and were known to be false and misleading at the time they were made, or were made with a reckless disregard as to whether they were true or false or of potential consequence to parishioners. These falsehoods and non-disclosures were material facts made with the intent to deceive and to induce reliance. Plaintiff did not learn of the Defendant's knowledge of the falsity of said representations, and/or of the failure to disclose the unfitness of Father Sutton nor could he have discovered through the exercise of due diligence the fraud against his that had been committed by Defendant until recently.

50. Defendant Diocese failed to implement reasonable policies and procedures to detect and prevent the physical sexual abuse of boys by Father Sutton even though it knew or should have known that Father Sutton was a predictable risk for such sexual abuse and sexual misconduct. The reckless acts arising out of Defendant's de facto policies and actual practices include, but are not limited to:

- a. supervising, assigning, reassigning, and retaining Father Sutton as well as other Fort Worth clerics known to have abused minors and vulnerable adults;
- b. aiding, abetting and ratifying the abuse of children by Catholic clerics and other leaders within their parishes;
- c. failing to adopt adequate policies and procedures for the protection of children and/or to implement and comply with such procedures if they did exist;
- d. failing to investigate matters brought to their attention involving child abuse and/or suspicion of child abuse;
- e. ignoring warnings from medical professionals, even those within the Catholic Church, that certain priests who were psychologically unfit could be sexually dangerous to children, particularly boys of Doe's age;

- f. ignoring warnings from others within the dioceses' and bishops' conferences who believed that such priests were threats to children;
- g. failing to alert or warn parents, parishioners and the surrounding communities where abusive priests had served that they were exposed to known or suspected child molesters such as Father Sutton;
- h. failing to report the crimes committed by other priests such as Sutton to law enforcement and obstructing or interfering with law enforcement investigations concerning abusive priests;
- i. using Church influence to circumvent the criminal legal process relating to priests who had been engaging in illegal sexual acts and to conspire to recycle them back into active ministry;
- j. making decisions which reflected that the reputations of abusive priests and the desire to avoid scandal were vastly superior and more important to the Diocese than the welfare of victims who had been abused by priests and of victims' families;
- k. fostering an environment and culture where sexual abuse of children and vulnerable adults by clergy could flourish and in which it was clearly understood that there was no accountability for their criminal acts toward children in particular;
- l. misrepresenting facts to victims who requested information about Father Sutton and other priests who abused them in order to fraudulently conceal their own negligence;
- m. continuing to hide, conceal or destroy the "sub secreto" files of priests who have committed criminal acts.

51. The conduct of Defendant Diocese is in violation of state and federal criminal statutes regarding sexual abuse of children, including but not limited to Texas Penal Code §§ 21.02 (Continuous Sexual Abuse of a Child or Children), 21.11 (Indecency with a Child), 21.12 (Improper Relationship Between and Educator and a Student), 21.15 (Improper Photography or Visual Recording), 22.011 (Sexual Assault), 22.01 (Assault) and 22.021 (Aggravated Sexual Assault). Such violations constitute negligence *per se*.

52. Plaintiff alleges that the actions of the Diocese have inflicted emotional distress upon Plaintiff.

53. Defendant Diocese, at the time and on the occasions in question, acted with heedless and reckless disregard for the safety of the Plaintiff, which disregard was the result of conscious indifference to the rights, welfare and safety of Plaintiff in violation of the laws of the State of Texas.

54. Plaintiff asserts that the statute of limitations is tolled and/or has not expired for Plaintiff under the legal theories of: disability of unsound mind, fraud and fraudulent concealment (as referenced above), quasi and equitable estoppel, ratification, and the discovery rule. Further, Plaintiff asserts that the statute of limitations is tolled and/or has not expired due to delayed discovery of the harm caused by the sexual abuse and the consequential delay in treatment, despite the exercise of reasonable diligence on his part, due to repressed and/or suppressed memory.

55. Subsequent to the sexual abuse of the Plaintiff, the Diocese made numerous representations, promises and agreements to avoid the civil and criminal prosecution of several other priests of the Diocese which were either false and fraudulent when made or were made with the intent to not act as represented. Until recently Plaintiff did not learn of this fraud, which continues to this very day.

56. The actions of Defendants, as pleaded herein, proximately caused the incidents in question and the consequent damages sustained by Plaintiff.

VII
**CLAIMS OF CONSPIRACY: PATTERN AND PRACTICE
OF COVERING UP CLERGY SEXUAL ABUSE OF CHILDREN**

57. Archdioceses, Dioceses and Orders throughout the United States, including the Defendant Diocese corporation named in this lawsuit, have handled cases of criminal sexual abuse of minors by Catholic clergy in such a uniform fashion as to demonstrate a common pattern and practice for concealing these crimes from the public, including affected parishes and victims identified within them; for failing to report abusive clerics to proper civil authorities; and/or for spiring clerics out of dioceses, states and even country to church-run treatment facilities and havens in order to evade probable criminal action against priest-perpetrators and possible filing of civil claims by victims.

58. This well established, firmly rooted pattern, practice, scheme and protocol of protecting and recycling abusive priests was notably acknowledged publicly in February 2004 in a research study conducted by the John Jay School of Criminal Justice. That study, titled *A Report on the Crisis in the Catholic Church in the United States*, concluded in part:

Too many bishops in the United States failed to respond to this problem forthrightly and firmly. Their responses were characterized by moral laxity, **excessive leniency, insensitivity, secrecy, and neglect**. Aspects of the failure to respond properly to sexual abuse of minors by priests included: (i) **inadequately dealing with victims of clergy sexual abuse**, both pastorally and legally; (ii) **allowing offending priests to remain in positions of risk**; (iii) **transferring offending priest to new parishes or other dioceses without informing others of their histories**; (iv) **failing to report instances of criminal conduct by priests to secular law enforcement authorities, whether such a report was required by law or not**; and (v) **declining to take steps to laicize priests who clearly had violated the law** [*emphasis ours*].⁴

⁴ See John Jay Report at page 92, which can be found on the United States Catholic Conference of Bishops' website, www.usccb.org/ocyp/webstudy.shtml

59. This common plan and scheme, which was in existence well before the abuse of Plaintiff, was followed by Defendant herein to conceal crimes against children by Catholic clerics of and within the Fort Worth Diocese. Members of this common plan and scheme have included not only Bishops but “other clerics,” individuals and entities, some still currently unknown to Plaintiff.

60. Defendants were aware or should have been aware of the sexual abuse of Plaintiff and other children within its territory and of the misconduct of Father Sutton, as well as other offending clerics. Defendants knew or should have known Sutton was psychologically unfit and a palpable risk to children, especially boys. Defendants failed to disclose this information to parents but instead, in keeping with their protocol, entered into an agreement with Father Sutton and other cooperators, aiders and abettors to keep secret this information even at lifelong injury and devastating cost to victims.

VII **DAMAGES**

61. As a result of the conduct and incidents described herein, Plaintiff has incurred medical and/or counseling expenses in the past and in all reasonable probability will incur medical and/or counseling expenses in the future.

62. Plaintiff has suffered severe mental anguish in the past and present and in all reasonable probability will sustain severe mental anguish in the future.

63. Plaintiff has experienced physical injury, pain and suffering.

64. Plaintiff pleads physical impairment damages.

65. Plaintiff has suffered diminished wage earning capacity in the past and in all reasonable probability will suffer loss of earning capacity in the future.

66. Plaintiff seeks exemplary damages based on Defendant's gross negligence.

67. As a result of the above, Plaintiff seeks damages within the jurisdictional limits of the Court.

VIII
CRIMINALLY COMPLICIT DEFENDANTS:
RECOVERABLE PUNITIVE DAMAGES

68. Tex. Civ. Prac. & Rem. Code §41.005(a) does not apply to bar punitive damages in this matter because Defendant was criminally complicit. Tex. Civ. Prac. & Rem. Code §41.005(b)(2) provides an exception when a defendant is criminally responsible as a party to the criminal act. Under Chapter 7 of the Texas Penal Code, specifically §7.02(a), a person is criminally responsible for an offense committed by the conduct of another if:

- (1) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense;
or
- (2) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

69. Tex. Pen. Code Ann. §7.02(a)(2). The provisions of this statute are met because Defendant assisted and aided Father Sutton in the commission of the sexual assaults on Plaintiff by allowing him access to Plaintiff.

70. Further, provisions of Tex. Pen. Code Ann. §7.02(a)(3) are met because Defendant had a duty to prevent the sexual assault of Plaintiff. Defendants knew or should have

known of Father Sutton 's history but, despite that knowable or known information, did not timely withhold him from assignment, remove him from it, nor report him to police but instead repeatedly placed him in environments where he could prey upon young boys like and including Plaintiff.

71. Additionally, Tex. Pen Code Ann. §§7.21-7.23 encompasses the criminal responsibility of corporations or associations and provide that a corporation or association is criminally responsible for the conduct of its agent if it was authorized, performed or recklessly tolerated by a high managerial agent. Defendant not only tolerated Reverend Sutton's misconduct but also aided and abetted Sutton in acquiring victims. Plaintiff would show that Defendant recklessly allowed the egregious misconduct of Father Sutton and is therefore subject to punitive damages in this case.

IX **JURY DEMAND**

72. Plaintiff requests that a jury of his peers hear the evidence in this case and render a just verdict jointly and severally against Defendant.

X **STATEMENTS TO THE COURT**

73. Plaintiff pleads the discovery rule.

74. Plaintiff asserts that the statute of limitations is tolled and/or has not expired for Plaintiff under the legal theories of: disability of unsound mind, fraud and fraudulent concealment (as referenced above), quasi and equitable estoppel, ratification, and the discovery rule. Further, Plaintiff asserts that the statute of limitations is tolled and/or has not expired due to delayed discovery of the harm caused by the sexual abuse and the consequential delay in

treatment, despite the exercise of reasonable diligence on his part, due to repressed and/or suppressed memory.

75. Plaintiff alleges that this Defendant has acted to fraudulently conceal predatory clerics, some of whom are named herein, including Sutton, by retaining and recycling them, and to fraudulently conceal the extent and nature of clergy sexual abuse, including Sutton's, and the devastating, lifelong impact of such abuse upon vulnerable children. Further, in this case Bishop Olson and his agents conspired to misrepresent their intentions in order to obtain from Plaintiff a statement against his own interest in hope of destroying any potential civil claims he might have against the Church. The exceptional cross-continent efforts of Bishop Olson and his agent/interrogator, emphatically attest to their knowledge that he assuredly had just claims. The illegal exploitation of Doe's own unsuspecting mother was likewise intended to make certain he could not pursue them. Beyond its unsavory, uncharitable aspects, this fraudulent concealment tolls limitations. Defendant told Sutton's victim nothing of what he had a right to know in order to properly pursue his just claims. He assuredly had the right to retain an attorney and should not have been manipulated into not hiring one pursuant to the legal interests he did in fact have.

76. Plaintiff pleads fraud, including fraud by non-disclosure and fraudulent concealment of this fraud by the Diocese, thus suspending the running of limitations as to all claims.

77. Plaintiff pleads fraudulent concealment of facts under Defendant's control, thereby giving rise to his causes of action against Defendant and thus suspending the running of limitations.

78. Plaintiff pleads fraudulent concealment of statements and other fraudulent misrepresentations known to Defendant, thus suspending the running of limitations against the Diocese.

79. Plaintiff alleges that the Diocese has acted in concert with various entities to fraudulently conceal from other laity the identity of predatory priests such as Father Sutton, to recycle these ordained sex criminals, and to conceal the scandalous nature and extent of their misconduct as well as the range of resultant harmful effects, short-term and long-term.

80. Plaintiff has pled a civil conspiracy by illegal means to conceal criminal acts against children, to conceal the commission of criminal acts, to conceal negligence by unlawful means, to conceal fraud, to conceal the breach of the duty of trust and confidence, and to conceal the use of deception to avoid claims until limitations expire, thus suspending the running of limitations.

81. Plaintiff pleads that he was unable to discover this fraud, fraudulent concealment, or the civil conspiracy despite reasonable diligence on his part until within two years of the filing of this lawsuit.

82. Plaintiff pleads breach of fiduciary duty, including the duty to disclose, and the use of deception to conceal this breach of duty, thus suspending the running of limitations.

83. Plaintiff pleads the doctrines of Equitable Estoppel and Quasi-estoppel. Defendant remained silent when it had a duty to speak, thereby allowing Sutton's abuse of Doe to occur and enabling Defendant to conceal its role in it after the fact. Defendant's failure to disclose such material facts tolls limitations. Further, Defendant's own nefarious conduct of subjecting Doe to a calculated examination by an experienced questioner appearing under the

guise of a mere “volunteer,” then secretly and illegally taping his own mother to elicit information to be used against him surely should toll limitations in this case.

XI
REQUEST FOR DISCLOSURE

84. Under Texas Rule of Civil Procedure 194, Plaintiff Doe 117 requests that Defendant disclose within 50 days of the service of this request the information or material described in Rule 194.2 (a) - (l).

XII
PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff Doe 117 respectfully requests that Defendant, the Catholic Diocese of Fort Worth through Bishop Michael F. Olson in his official Capacity as Bishop of the Fort Worth Diocese, be cited to appear and answer, and on final trial, that Plaintiff have judgement against Defendants jointly and severally for:

- a. Actual damages;
- b. Punitive damages;
- c. Prejudgment and post judgment interest in accordance with §304.104, et seq., Texas Finance Code and any other applicable law;
- d. Costs of suit;
- e. Monetary relief of more than \$1,000,000.00;
- f. Any further relief, in law and equity, to which Plaintiff is justly entitled.

048-277157-15

RESPECTFULLY SUBMITTED,

/s/ Tahira Khan Merritt

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**ATTORNEY FOR PLAINTIFF
JOHN DOE 117**

CIVIL CASE INFORMATION SHEET

CAUSE NUMBER (FOR CLERK USE ONLY): 048-277457-15 COURT (FOR CLERK USE ONLY): _____

STYLED John Doe 117, vs. The Catholic Diocese of Fort Worth and Bishop Michael F. Olson
(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:		Names of parties in case:	Person or entity completing sheet is:
Name: <u>Tahira Merritt</u>	Email: <u>tahira@tkmlaufirm.com</u>	Plaintiff(s)/Petitioner(s): <u>John Doe 117, a pseudonym</u>	<input checked="" type="checkbox"/> Attorney for Plaintiff/Petitioner <input type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____
Address: <u>8499 Greenville Ave Suite 206 Dallas, Texas</u>	Telephone: <u>214-503-7300</u>	Defendant(s)/Respondent(s): <u>Catholic Diocese of Fort Worth and Bishop Michael F. Olson</u>	Additional Parties in Child Support Case: Custodial Parent: _____ Non-Custodial Parent: _____ Presumed Father: _____
Signature:	State Bar No: <u>11375550</u>	[Attach additional page as necessary to list all parties]	

2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
<input type="checkbox"/> Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: _____ <input type="checkbox"/> Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract: _____	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation <i>Malpractice</i> <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises <i>Product Liability</i> <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: _____ <input checked="" type="checkbox"/> Other Injury or Damage: _____	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: _____ Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other: _____	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void <i>Divorce</i> <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other: _____	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child: _____
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment: _____	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other: _____			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate & Mental Health <i>Probate/Wills/Intestate Administration</i> <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other: _____			

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
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4. Indicate damages sought (do not select if it is a family law case):

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
 Less than \$100,000 and non-monetary relief
 Over \$100,000 but not more than \$200,000
 Over \$200,000 but not more than \$1,000,000
 Over \$1,000,000