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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

7 **For the County of Santa Barbara, Anacapa Division**

8 MARIA CUNNINGHAM, an individual,

9 Plaintiffs,

10 v.

11 Franciscan Friars of California, Inc.; Old
12 Mission Santa Barbara; and Does 5
13 through 100, Inclusive.

14 Defendants.

Case No. 1265207

FIRST AMENDED COMPLAINT FOR DAMAGES 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 PLAINTIFFS;
9. INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS;
10. NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS;
11. VIOLATION OF PENAL CODE §
11166;
12. VIOLATION OF BUSINESS &
PROFESSIONS CODE § 17200;
13. FRAUD AND DECEIT;
14. PREMISES LIABILITY;
15. PROCURING OR MAKING A CHILD
AVAILABLE TO ANOTHER

1 Based upon information and belief available to Plaintiff Maria Cunningham at the
2 time of the filing of this First Amended Complaint, Plaintiff makes the following allegations:

3 **PARTIES**

4 1. Plaintiff Maria Cunningham is an adult female over the age of 26. Plaintiff was a
5 minor residing in the county of Santa Barbara at the time of the sexual abuse alleged
6 herein. Plaintiff's complaint is timely filed to address the continuing Public Nuisance
7 created by Defendants' ongoing conduct causing injury to the public and special injury to
8 her. It also is timely pursuant to Code of Civil Procedure section 340.1(a)(2-3) and (b)(2)
9 as Plaintiff discovered within three years of filing this complaint that her injuries were
10 caused by the childhood sexual abuse alleged herein. It is also timely pursuant to Evans v.
11 Eckelman (1990) 216 Cal.App.3d 1609.

12 2. Defendant Doe 1/Franciscan Friars of California, Inc. ("Defendant Franciscan Friars"
13 or "the Franciscans") is a Roman Catholic Order and a non-profit public benefit corporation
14 organized for religious purposes and incorporated under the laws of the State of California,
15 doing business in Santa Barbara. Defendant Order is the religious order that owned and/or
16 operated the properties in Santa Barbara – St. Anthony's Seminary ("St. Anthony's") and
17 Defendant Old Mission Santa Barbara – where many of Does 1 -100's other pedophilic
18 and/or ephebophilic agents sexually assaulted children.

19 2.1 Defendant Doe 4/Old Mission Santa Barbara ("Defendant Old Mission"), also known
20 as Saint Barbara Parish, is a Roman Catholic church or parish located within the
21 geographical boundaries of the Archdiocese in Santa Barbara, California. Old Mission is
22 the church or parish where the perpetrator was assigned, or in residence, or doing supply
23 work, or volunteering at, or visiting during the period of wrongful conduct. Does 1 through
24 100 are sometimes referred to collectively as "Defendants."

25 2.2 The Perpetrator was at all times relevant an individual residing and/or doing
26 business in the City and County of Santa Barbara, California, and was a Roman Catholic
27 priest, member, religious brother, employee, agent and/or servant of the Franciscans
28 and/or Defendant Old Mission and/or Does 5-100. During the dates of abuse, the

1 Perpetrator was assigned, or in residence, or doing supply work, or volunteering, or visiting
2 at Defendant Old Mission, and was under the direct supervision, employ and control of the
3 Franciscans and/or Defendant Old Mission and/or Does 5-100.

4 3. Defendant Does 5 through 100, inclusive, are individuals and/or business or
5 corporate entities incorporated in and/or doing business in California whose true names
6 and capacities are unknown to Plaintiffs who therefore sue such defendants by such
7 fictitious names, and who will amend the Complaint to show the true names and capacities
8 of each such Doe defendant when ascertained. Each such Defendant Doe is legally
9 responsible in some manner for the events, happenings and/or tortious and unlawful
10 conduct that caused the injuries and damages alleged in this First Amended Complaint.

11 4. The Perpetrator and/or each Defendant was and/or is the agent, servant and/or
12 employee of the Franciscans and/or Defendant Old Mission and/or Does 5 -100. The
13 Perpetrator and/or each Defendant was acting within the course and scope of his, her or its
14 authority as an agent, servant and/or employee of the Perpetrator and/or other Defendants.
15 The Perpetrator and/or the Franciscans and/or Defendant Old Mission and/or Does 5 -100,
16 and each of them, are individuals, corporations, partnerships and other entities which
17 engaged in, joined in and conspired with the other wrongdoers in carrying out the tortious
18 and unlawful activities described in this First Amended Complaint, and the Perpetrator
19 and/or each Defendant ratified the acts of the Perpetrator and/or the Franciscans and/or
20 Defendant Old Mission and/or Does 5 -100 as described in this Complaint.

21
22

BACKGROUND FACTS APPLICABLE TO ALL COUNTS

23 5. Plaintiff Maria Cunningham was raised Roman Catholic and attended a number of
24 Santa Barbara parishes as a child, including San Roque, Our Lady of Mt. Carmel in
25 Montecito and Defendant Old Mission. She met the Perpetrator at the Santa Barbara Girl's
26 Club in or about 1964 when she was approximately six (6) years old. He was introduced to
27 the girls as a member of Defendant Franciscan Friars, and Maria assumed he was a
28 Roman Catholic priest, having never heard nor having any concept of a Roman Catholic

1 religious brother.

2 In getting to know the young girl the Perpetrator soon discovered Maria was living in
3 a single-parent family without a father, making her an ideal target as a child starved for
4 anything resembling paternal attention and affection. Maria in turn was overjoyed by the
5 attention the Perpetrator showered upon her. After a short period of grooming Maria for
6 abuse (showering her with praise, taking her to the zoo or the beach, buying her candy and
7 hamburgers, and touching and holding her), he began sexually abusing her.

8 For approximately a year the Perpetrator assaulted Maria on a regular basis. Much
9 of the abuse took place in the living quarters for some of the members of Defendant
10 Franciscan Friars that were located between St. Anthony's Seminary and the Old Mission.
11 In these instances, numbering at least forty (40) or more, the Perpetrator would have Maria
12 change into her bathing suit in the middle of the room while he watched. On nearly half of
13 those occasions the Perpetrator would allow other Franciscans to watch with him while the
14 embarrassed young girl removed all of her clothes and underwear and changed into her
15 swimsuit, trying in vane to cover herself by holding a towel in her mouth as she disrobed.
16 She recalls it seemed as if the Perpetrator was constantly introducing her to new
17 Franciscans who watched her strip naked, and to this day she can still feel their eyes
18 exploring her exposed body.

19 Approximately twenty (20) times the Perpetrator sexually abused Maria in the
20 stairwell leading to the parish organ at the Mission, claiming he needed to carry her up and
21 down the stairwell because the stairs were too steep and he was afraid she would fall. In
22 reality, he used this excuse as an opportunity to digitally penetrate her repeatedly,
23 sometimes to the point the six year-old's genitals would become raw. The Perpetrator also
24 digitally penetrated Maria at times while they sat in his car at the beach, covering them
25 both with a blanket so he could sexually assault her without being seen. Sometimes the
26 Perpetrator would rub his penis up and down the young girl's underwear, occasionally
27 pushing it underneath her underwear.

28 Finally, on approximately ten (10) occasions he induced her to masturbate him,

1 sometimes until he climaxed. These assaults took place in the room in the Mission where
2 the parish organ was located, and in the Perpetrator's car.

3 6. The Perpetrator and Defendants' other pedophilic and/or ephebophilic agents
4 committed acts of Childhood Sexual Abuse in Santa Barbara before, during, and after the
5 time Maria attended Defendant Old Mission. The Franciscan corporate practice of
6 concealing the identities, propensities, and current assignments and/or residences of these
7 perpetrators has enabled and empowered such men to sexually assault and/or continue to
8 place at risk countless children around the various locations in the Western United States
9 and throughout the world where these Franciscans have conducted their business for
10 nearly a century, including but not limited to Franciscan friaries, missions, parishes, retreat
11 centers and other communities in the western States of Arizona, California, Missouri,
12 Nevada, New Mexico, Oregon, Utah and Washington, and in countries such as Africa,
13 Brazil, El Salvador, Guatemala, Israel, Italy, Mexico, Peru, the Philippines and Thailand.
14 Finally, an unknown number of Defendants' former pedophilic and/or ephebophilic agents,
15 whose propensities Defendants have been aware of for years but have disclosed to no
16 one, continue to sexually assault and/or place at risk countless children around these
17 various locations as well as at numerous other locations, such as in the State of Idaho,
18 where these former Franciscans now reside.

19 7. Defendants knew or should have known of the risk posed by the Perpetrator to
20 children before and during the time period he was assaulting Maria. In addition to the
21 approximately ten to fifteen instances where the Perpetrator induced Maria to strip naked
22 and change into her swimsuit in the middle of the room in the presence of at least one
23 other Franciscan, Maria recalls an instance where the Perpetrator and a second
24 Franciscan were sitting in chairs and watching as she undressed in the middle of the room.
25 However, on this occasion, as she began to pull her bathing suit bottoms on while wearing
26 no other clothing, a third Franciscan unexpectedly entered the room. She perceived him to
27 be an authority figure as both the Perpetrator and the second Franciscan immediately
28 stood up when he entered and seemed nervous. She sensed the third Franciscan was

1 very displeased she was there, and felt as if she was in trouble. After a tense exchange
2 between the third Franciscan and the Perpetrator, the Perpetrator rushed her out of the
3 room and off the grounds shortly thereafter. However, the Franciscans never warned
4 Maria's mother, much less the community or law enforcement, that one of their members
5 was inducing a six year-old girl to strip naked at the Mission while he and other
6 Franciscans watched. As a result, although further abuse could have been prevented, the
7 Perpetrator's abuse of Maria continued after this incident.

8 Thus, before the Perpetrator's assaults against Maria ended, at least two other
9 Franciscans were aware of the abuse being committed by the Perpetrator, and at least one
10 of them was participating in exploiting a six year-old girl to create a pedophilic peep-show
11 at the Old Mission and St. Anthony's. The Franciscans could have stopped this abuse
12 from continuing, and undoubtedly could have saved other young girls from subsequent
13 abuse by the Perpetrator. Instead, the Franciscans told no one, protected their clearly
14 pedophilic brethren and their own financial interests, and as a result the abuse continued.

15 8. Numerous other pedophilic and/or ephebophilic agents of Defendants have been
16 sexually assaulting countless other children in, among other locations, Santa Barbara since
17 1936. During this time at least forty-two (42) pedophilic and/or ephebophilic Roman
18 Catholic priests or religious brothers have been assigned to work at and were living at
19 and/or visiting various locations around Santa Barbara County, including but not limited to
20 St. Raphael's Church in Goleta, San Roque, Our Lady of Guadalupe, Our Lady of Mt.
21 Carmel in Montecito, and the adjoining properties of St. Anthony's and the Mission.
22 Twenty-five (25) of those priests or religious brothers were or are Franciscans, identified
23 below in the decades they first appeared and continued to reside in or visit Santa Barbara
24 based on information known to date:

- 25 1 - Fr. Owen Da Silva (1930s)
26 2 - Br. Berard Connolly (1940s, 1980s - 1990s)
27 3 - Fr. Martin McKeon (1950s - 1960s)
28 4 - Fr. Edward Henriques (1960s)

- 1 5 - Fr. Mario Cimmarrusti (1960s - 1970s)
- 2 6 - Fr. Mel Bucher (1960s)
- 3 7 - Fr. Forrest McDonald (1960s - 1970s)
- 4 8 - Br. Kevin Dunne (1960s - 1970s)
- 5 9 - Br. Sam Cabot (1960s-1980s)
- 6 10 - Fr. Edmund Austin (1970s)
- 7 11 - Fr. Gus Krumm (1970s - 1980s)
- 8 12 - Fr. Paul Conn (1970s - 1980s)
- 9 13 - Fr. Dave Johnson (1970s - 1980s)
- 10 14 - Fr. Joseph Prochnow (1970s - 1980s)
- 11 15 - Br. Matteo Guerrero (1970s, 1990s - 2000s)
- 12 16 - Fr. Robert Van Handel (1970s -1990s)
- 13 17 - Fr. David Carriere (1970s - 2000s)
- 14 18 - Fr. Steve Kain (1980s)
- 15 19 - Fr. Philip Wolfe (1980s)
- 16 20 - Pre-novitiate candidate Ed Byrom (1980s)
- 17 21 - Pre-novitiate candidate Tom Thing (1980s)
- 18 22 - Fr. Chris Berbena (1980s)
- 19 23 - Fr. Remy Rudin (1980s - 1990s)
- 20 24 - Br. Gerald Chumik (2000s)
- 21 25¹ - Pedro Vasquez (2000s)

23 At least eighty-one (81) children have been sexually abused in Santa Barbara by
24 Roman Catholic priests or religious brothers since 1936. Sixty (60) of those children were

26 ¹ This number does not include at least two (2) lay perpetrators the Franciscans allowed to sexually
27 assault seminarians or boys choir members on the grounds of St. Anthony's among other locations.
28 Specifically, during the 1970s St. Anthony's faculty member Francisco Moreno sexually assaulted at least one
student in Moreno's office, and invited an unknown number of men from the community to assault the student
as well. Additionally, in the 1980s perpetrator Fr. Robert Van Handel allowed and enabled his pedophilic
friend, Gerald Heather, to sexually assault at least three members of the Santa Barbara Boys Choir.

1 abused by Franciscan priests or religious brothers. The confirmed number of victims and
2 Franciscan perpetrators grows each year.

3
4 **THE FRANCISCANS' CONTINUING REFUSAL TO PUBLICLY IDENTIFY ALL OF THEIR**
5 **CURRENT OR FORMER PEDOPHILIC MEMBERS HAS CREATED A DEADLY**
6 **ENVIRONMENT FOR TODAY'S CHILDREN**

7 9. Time and again the Franciscans have had the opportunity to end the cycle of abuse
8 by reporting perpetrators to law enforcement, and by warning the general public when a
9 Franciscan has been accused of sexually assaulting a child. Tragically, the Franciscans
10 ongoing efforts to protect their pedophilic members, and to protect the corporation's
11 financial interests, establish a clear and continuing pattern of conduct causing new harm to
12 today's children, and new trauma to adult survivors of Franciscan childhood sexual abuse.

13 10. Since at least 1964 the Franciscans have known some of their priests and religious
14 brothers were sexually assaulting Santa Barbara children, and of the fact any child
15 exposed to their agents was at a heightened risk of being sexually assaulted. Since at
16 least 1964 the Franciscans have been concealing these crimes, and shielding their criminal
17 members from discovery. Sadly, even with the recent litigation, the Franciscans have not
18 changed their ways. The following are examples only of some of the most recent known
19 Franciscan conduct placing children at risk. These examples illustrate how the
20 Franciscans' conduct remains a present day threat to children wherever the Franciscans
21 conduct their business, and is not just a thing of the past.

22 ● In July of 2003, the Franciscans assigned an admitted perpetrator – Fr. Gus
23 Krumm – to a Sacramento parish next door to a school without any warning to the
24 community. One Franciscan priest readily admitted he was aware of Fr. Krumm's prior
25 abuses but did not think it was appropriate to share such information with parishioners.
26 Despite the fact the Franciscans claimed Fr. Krumm was forbidden contact with young
27 children, he did in fact have direct contact with young children while at this assignment. Fr.
28 Krumm's current whereabouts are unknown to the general public.

1 ● In July 2004 the Franciscans admitted – albeit only after a reporter from the
2 Dallas Morning News made the facts public – that yet another predator had been calling
3 the Old Mission home for over two years. Specifically, in the early to mid-1970's
4 Franciscan Br. Gerald Chumik assaulted at least one victim in Canada. Canadian
5 authorities attempted to prosecute Br. Chumik in the 1990s, but Chumik fled to the United
6 States. The Franciscans successfully and secretly harbored Br. Chumik, a fugitive from
7 justice, behind the walls of the Old Mission for over two years. The Franciscans provided
8 no warning to the public, much less to neighboring schools, of the threat Br. Chumik posed
9 until the Dallas Morning News published the truth about Chumik. Br. Chumik's current
10 whereabouts are unknown to the general public.

11 ● In May 2005, the former rector of St. Anthony's, Fr. Xavier Harris, admitted
12 that while he was assigned at St. Williams in Los Altos in 2001, a well-known Franciscan
13 Perpetrator, Fr. Steve Kain, assisted there as well. Fr. Harris did not warn any of the
14 parishioners of Fr. Kain's propensities, nor, to his knowledge, did any other Franciscans
15 warn any parishioners about Fr. Kain. With no shortage of victims who were unaware of
16 his propensities, Fr. Kain abused again. Fr. Harris admitted that Fr. Kane was then forced
17 to stop assisting at St. Williams due to the abuse allegations, and was transferred to St.
18 Boniface in San Francisco. Once again, Fr. Harris admitted he had no knowledge of any
19 warnings to parishioners at St. Boniface regarding Fr. Kain's propensities. Fr. Kain's
20 current whereabouts are unknown to the general public.

21 ● In July 2005, the Franciscan Vicar Provincial, Br. Tom West, admitted
22 Mission resident, Franciscan Pedro Vasquez, had been accused of sexually assaulting a
23 person West described as a "young man." The Franciscans had allowed Vasquez to live at
24 the Mission for three years without any warning to the community, and admitted to this fact
25 in July of 2005 only when they knew its publication was inevitable. Fr. Vasquez's current
26 whereabouts are unknown to the general public.

27 ● In late 2006 a victim spoke with Fr. Virgil Cordano at the Mission and
28 informed Cordano he had been sexually assaulted in 1976 by a Franciscan religious

1 brother, Br. Mateo Guererro. Cordano did not act surprised at this information, admitted
2 there had been other complaints against Guererro, and admitted that Guererro had been
3 transferred as a result. To date, the Franciscans have taken no steps to make this
4 information public, no steps to determine whether there are any other victims of Guererro
5 who have not come forward, no steps to notify the communities in which Guererro has
6 been assigned over the course of his career as a Franciscan, and no steps to warn the
7 current community where Guererro is assigned. Br. Guererro's current whereabouts are
8 unknown to the general public.

9 ● Since approximately 1994 to the present the Franciscans have assigned
10 another admitted perpetrator – Fr. Mel Bucher – to Old Mission San Luis Rey. Fr. Bucher
11 sexually assaulted at least one adolescent boy in Oregon in the early 1970s. Despite this
12 admission, the Franciscans continue to allow Fr. Bucher to manage the Mission San Luis
13 Rey retreat center. The retreat center conducts retreats for, among others, high school-
14 aged children, including overnight retreats for students from, among other locations, Mater
15 Dei High School in Santa Ana. At least one current Franciscan and former Mater Dei
16 faculty member has stated he would not discuss the allegations of abuse by Fr. Bucher
17 with Mater Dei faculty or administrators because he does not “see any purpose being
18 served in that.” The Franciscans have never warned the families of these students of Fr.
19 Bucher's history of abuse.

20
21 Such action and inaction by the Franciscans has and will continue to produce
22 disastrous results, as evidenced by the case of Fr. Louis Ladenburger. Ladenburger left
23 the priesthood and the Franciscan order in 1996. However, early in his career as a
24 Franciscan Ladenburger was treated for what the Franciscan Provincial Minister, Mel
25 Jurisich, has described only as “inappropriate professional behavior and relationships.”
26 Such vague terms are standard procedure for the Franciscans when describing acts of
27 childhood sexual abuse by their priests and religious brothers. After sending Ladenburger
28 for treatment for his criminal conduct twice in the 1980s, the Franciscans allowed him to

1 continue to work as a priest, including working at high schools. After another psychological
2 review in 1993, the Franciscans insisted on restricting Ladenburger's ministry. However, at
3 no time did the Franciscans report Ladenburger's criminal acts to law enforcement. At no
4 time did the Franciscans warn any families or communities where Ladenburger had worked
5 or was working as a priest. As a result, when he left the priesthood nearly twenty-years
6 after the Franciscans first learned of and began to conceal the risk he posed to children,
7 Ladenburger had never been convicted of a sex crime, was not a registered sex offender,
8 and only the Franciscans were aware of his pedophilic propensities. An unknown number
9 of children have been sexually assaulted by Ladenburger as a result. In May of 2007,
10 Ladenburger was arrested for sexually assaulting several children in Idaho.

11 When first contacted shortly after Ladenburger's arrest last year, the Franciscans
12 denied having any record of past abuses by Ladenburger. After this initial denial, Fr.
13 Jurisich finally admitted to Ladenburger's sordid history, and the Franciscans' knowledge
14 since the 1980s of the risk he posed to children. Ladenburger has since pleaded guilty to
15 lewd conduct with two boarding school students, and on March 24, 2008, was sentenced to
16 five years in prison. The sentencing judge, the Honorable John Luster, found
17 Ladenburger's conduct so severe that he rejected a joint request by the prosecution and
18 the defense of a suspended sentence. Ladenburger has admitted he has a sex addiction.
19 These latest victims are further evidence of the continuing threat to all children posed by
20 the Franciscans' refusal to warn the public of their current and former members who have
21 been accused of sexual abuse.

22 Four months after the Franciscans first denied then admitted they knew about the
23 threat posed by Ladenburger, they were at it again. One would hope that after decades of
24 Franciscan sexual abuse and cover-ups, at some point – perhaps, for instance, now that
25 the number of confirmed Santa Barbara victims of Franciscan childhood sexual abuse has
26 risen to **sixty** – the Franciscan hierarchy would **finally** reconsider the corporation's horribly
27 flawed strategy of lying about and refusing to identify Franciscan priests and brothers
28 accused of sexual abuse. One would hope that after seeing **today's children** continuing

1 to be victimized as a result of this failed corporate strategy they would finally recognize that
2 for the sake of both past and future victims, it was time to tell the truth. However, as
3 evidenced by their recent conduct towards Maria, the Franciscans have learned nothing
4 from the sad events involving Ladenburger, much less from their sordid history. Instead,
5 they continue to re-victimize survivors of Franciscan sexual abuse, and to create new
6 victims, by continuing to lie, conceal and cover-up the identities of Franciscans who pose a
7 risk to children.

8 In this case, Maria contacted the Franciscans for help when she finally began to
9 make the connection between her injuries and the abuse she suffered. Because of her
10 young age at the time of the abuse, and the trauma she suffered during the abuse, she
11 had been unable to recall the name of the Perpetrator. She informed the Franciscans of
12 her age at the time of the abuse (6 years old), of the Perpetrator's grooming techniques
13 (such as buying Maria candy), of the nature of the abuse (primarily digital penetration), of
14 the fact the Perpetrator often abused her while they sat under a blanket, and of the fact he
15 appeared to come and go quite a lot and may not have lived at the Old Mission. She also
16 informed the Franciscans the Perpetrator's name might be "Ed" or "Sam." In response, the
17 Franciscan Vicar Provincial, Br. Tom West, informed Maria in September 2007 and during
18 a meeting in November 2007 that the Franciscans had been **"unable to find [any**
19 **possible Franciscan perpetrator] of either name."** This response led Maria falsely to
20 believe she was the only child abused by the Perpetrator, thus creating new emotional
21 distress, shame and self-loathing in Maria. As is all too common in many victims of
22 childhood sexual abuse, she wondered what she had done wrong to make her the
23 Perpetrator's only target. Feeling horribly alone and ashamed after the meeting, Maria
24 suffered through new injuries as a result of the Franciscans' supposed inability to identify
25 her perpetrator: a debilitating panic attack and migraine, and repeated vomiting throughout
26 the night after the meeting with Br. Tom.

27 Unbeknownst to Maria at the time, this new trauma could have been avoided. The
28 Franciscans and Br. Tom undoubtedly had, in fact, identified a possible Franciscan

1 Perpetrator named Sam: Br. Sam Cabot. In 2006 both Br. Tom and the Franciscan's
2 Provincial Minister, Fr. Jurisich, participated in multiple mediation sessions in Los Angeles
3 involving, among others, two victims of Br. Sam. Br. Tom and Fr. Jurisich knew from their
4 involvement in those two claims that Br. Sam had sexually abused two young girls who, like
5 Maria, were six years old during the periods of abuse; they knew that one of Br. Sam's
6 favorite grooming techniques, as with Maria, was to buy his victims candy; they knew that,
7 as with Maria, Br. Sam's abuse consisted primarily of digital penetration; they knew Br.
8 Sam used to abuse these two girls, as with Maria, as he sat with them under a blanket; and
9 they knew that Br. Sam had continued to abuse both these young girls in Santa Barbara
10 even while, as may have been the case with Maria, he was neither assigned nor living in
11 Santa Barbara at the time. Despite his knowledge of these obvious parallels, Br. Tom
12 denied any knowledge even of a **possible** Franciscan perpetrator named Sam. In fact,
13 although during his November 2007 meeting with Maria Br. Tom acknowledged that these
14 two young cousins had been abused by a Franciscan, he never disclosed to Maria the fact
15 their perpetrator's name was "Sam." Nor did he disclose his awareness of another
16 possible Franciscan perpetrator named "Ed," Fr. Edward Henriques, who also spent time in
17 Santa Barbara during the period of abuse.

18 This is exactly the kind of Franciscan deception that brings new torment to victims
19 who find the courage to come forward, and results in new victims such as those of Louis
20 Ladenburger. Clearly, seeing yet another example in the Ladenburger case of the tragedy
21 Franciscan deception and duplicity has wrought has done nothing to change Franciscan
22 business practices when dealing with pedophilic priests and religious brothers. The
23 Franciscans' first and only loyalty is to their corporation and its members, pedophilic or
24 otherwise. As a result, both adult survivors of Franciscan childhood sexual abuse and
25 today's children exposed to Franciscan perpetrators continue to be chewed up and spat
26 out by the Franciscan corporate machine. And the number of past and present victims of
27 this Franciscan corporate scheme continues to grow.

28

1 prosecuted, convicted, and forced to register as sex offenders. Thus, the Franciscans
2 have successfully concealed from the public the identities of an unknown number of
3 Franciscan perpetrators.

4 As evidenced by the new victims in the Ladenburger case, and the continuing
5 pattern of deceit evidenced by the Franciscans' conduct towards Maria, the clergy-abuse
6 crisis has not been abated by the 2006 Franciscan litigation. To the contrary, it is business
7 as usual at Franciscan corporate headquarters. For this reason, the legal system cannot
8 sit back and wait for current or former Franciscan perpetrators such as Ladenburger to
9 reveal themselves through new victims. The ongoing lies, deceit, and concealment by the
10 Franciscans mandate **proactive efforts** to save **today's** children from new abuse like that
11 suffered by Ladenburger's recent victims. The public needs to know where Br. Cabot is
12 currently working, particularly when he is less than half a mile away from an elementary
13 school. They need to know about the abuse committed by Br. Matteo, and where he is
14 currently assigned or in residence. They need to know about Fr. Bucher's history of abuse,
15 particularly where he is allowed to conduct or have access to retreats for adolescents. And
16 they need to know about every other current or former Franciscan who, like Ladenburger
17 until he was caught sexually abusing more children in 2007, have been accused of
18 childhood sexual abuse but have not yet been identified.²

19 It is an abomination that of the twenty-five (25) Franciscan perpetrators who have
20 lived or spent significant time in Santa Barbara since 1936, only two have been criminally
21 prosecuted locally³. The sad reality is the criminal courts' hands have been tied by the
22 Franciscans' successful efforts to conceal Franciscan criminal acts and the whereabouts of
23 known perpetrators until the applicable statutes of limitation have expired. As a result,
24 absent immediate action by the civil courts, today's children will continue to be victimized

25

26 ² In a recent June 19, 2008, article in the Santa Barbara *Independent* the Franciscans admit to
27 knowledge of twenty-seven (27) Franciscan perpetrators but, again, provide no information regarding their
identities, assignment histories, or propensities.

28 ³ A third perpetrator, Paul Conn, was prosecuted in Washington state after leaving Santa Barbara.

1 by Franciscan perpetrators wherever the Franciscans of the Province of St. Barbara
2 conduct their business, and at numerous other locations where unidentified former
3 Franciscan perpetrators, like Ladenburger, now reside. Pursuant to the compelling state
4 interest in preventing acts of future childhood sexual abuse, the Franciscans must be
5 ordered to disclose immediately the identities, histories of abuse, and last known locations
6 of all current and former Franciscans accused of childhood sexual abuse while they were
7 members of the Order.

8 9 THE INJURY TO MARIA

10 10.1 The sexual abuse and exploitation of Plaintiff and the circumstances under which it
11 occurred caused Plaintiff to develop various psychological coping mechanisms which
12 reasonably made her incapable of ascertaining the resulting damages from that conduct.
13 Within the last 3 years, Plaintiff discovered or reasonably should have discovered that
14 psychological injury or illness occurring after the age of majority was caused by the sexual
15 abuse.

16 The Perpetrator's use of Roman Catholic doctrine and his status as a religious
17 brother during the period of abuse also inhibited Maria's awareness of the wrongfulness of
18 his conduct until recently. The assaults often took place during or after the Perpetrator
19 read to or spoke with Maria about various biblical study materials from the parish. The
20 Perpetrator would then tell Maria she "needed to do this" (i.e. masturbate him), while
21 talking to her about Jesus having given people what they needed. After most assaults he
22 warned her not tell anyone or God would be angry with her. In doing so, the Perpetrator
23 exploited Maria's having been raised in the Catholic church, and induced Maria to believe
24 she needed to agree to the conduct or risk angering God. Consequently, while sensing
25 something was wrong, Maria was unable to appreciate the wrongfulness of the conduct
26 until recently, within the last three years. She has always felt that she had done something
27 wrong, and feared bringing shame to her family if anyone found out about the abuse. All of
28 these things resulted in psychological blocking mechanisms that have prevented her from

1 facing and realizing the wrongfulness of the Perpetrator's conduct until recently when, out
2 of desperation, she began to delve more deeply into what was causing her debilitating
3 panic attacks.

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

12
13 **FIRST CAUSE OF ACTION**

14 **PUBLIC NUISANCE**

15 **(Against The Defendants)**

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

18 13. Defendants continue to conspire and engage in efforts to: 1) conceal from the
19 general public the sexual assaults committed by, the identities of, and the
20 pedophilic/ephebophilic tendencies of, the Perpetrator and Defendants' other pedophilic
21 agents; 2) attack the credibility of the victims of the Perpetrator and Defendants' other
22 pedophilic/ephebophilic agents; and 3) protect the Perpetrator and Defendants' other
23 pedophilic/ephebophilic agents from criminal prosecution for their sexual assaults against
24 children, all in violation of law.

25 14. The negligence and/or deception and concealment by Defendants was and is
26 injurious to the health and/or indecent or offensive to the senses and/or an obstruction to
27 the free use of property by the general public, including but not limited to residents of the
28 County of Santa Barbara and all other members of the general public who live in

1 communities around the Western United States where Defendants conducted, and
2 continue to conduct, their business, and was and is indecent and offensive to the senses,
3 so as to interfere with the general public's comfortable enjoyment of life in that children
4 cannot be left unsupervised in any location where there are agents of Defendants present
5 as the general public cannot trust Defendants to prohibit their pedophilic agents from
6 supervising, caring for, or having any contact with children, nor to warn parents of the
7 presence of the current and/or former pedophilic agents of Defendants, nor to identify their
8 current and/or former pedophilic agents, nor to disclose said agents' assignment histories,
9 nor to disclose their patterns of conduct in grooming and sexually assaulting children, all of
10 which create an impairment of the safety of children in the neighborhoods in Santa Barbara
11 and throughout the Western United States where Defendants conducted, and continue to
12 conduct, their business.

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

18 Defendants' negligence and/or deception and concealment of the Perpetrator's
19 identity, and of the fact he had other victims in addition to Plaintiff, also caused Plaintiff
20 new emotional distress and injury as Defendants' negligence and/or deception led Plaintiff
21 to believe she was the Perpetrator's only victim when in reality Defendants knew or should
22 have known the Perpetrator did in fact have other victims. This false belief in turn caused
23 Plaintiff to fear that as the Perpetrator's only victim she had done something wrong to
24 trigger the abuse, resulting in Plaintiff experiencing overwhelming feelings of shame and
25 guilt, and causing new emotional distress and injury for Plaintiff. These new injuries could
26 have been prevented by Defendants had they simply acknowledged the identity of the
27 Perpetrator and that Plaintiff was not his only victim.

28 The negligence and/or deception and concealment by Defendants also was

1 specially injurious to Plaintiff's health in that when Plaintiff finally discovered the negligence
2 and/or deception and concealment of Defendants, Plaintiff experienced extreme and
3 severe mental and emotional distress that Plaintiff had been the victim of the Defendants'
4 negligence and/or deception and concealment; that Plaintiff had not been able to help
5 other minors being molested because of the negligence and/or deception and
6 concealment; and that Plaintiff had not been able because of the negligence and/or
7 deception and concealment to receive timely medical treatment needed to deal with the
8 problems Plaintiff had suffered and continues to suffer as a result of the molestations.

9 16. The continuing public nuisance created by Defendants was, and continues to be,
10 the proximate cause of the injuries and damages to the general public alleged in paragraph
11 14, and of Plaintiff's special injuries and damages as alleged in paragraph 15.

12 17. In doing the aforementioned acts, Defendants acted negligently and/or intentionally,
13 maliciously and with conscious disregard for Plaintiff's rights.

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

24 **SECOND CAUSE OF ACTION**

25 **NEGLIGENCE**

26 **(Against All Defendants)**

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

1 20. Sometime in approximately 1964, the Perpetrator repeatedly engaged in
2 unpermitted, harmful and offensive sexual conduct and contact with Plaintiff. Said conduct
3 was undertaken while the Perpetrator was an employee, volunteer, representative, or
4 agent of Defendants, while in the course and scope of employment with Defendants,
5 and/or was ratified by Defendants.

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

18 22. Defendants had a duty to protect the minor Plaintiff when she was entrusted to their
19 care by Plaintiff's parents. Plaintiff's care, welfare, and/or physical custody was temporarily
20 entrusted to Defendants. Defendants voluntarily accepted the entrusted care of Plaintiff.
21 As such, Defendants owed Plaintiff, a minor child, a special duty of care, in addition to a
22 duty of ordinary care, and owed Plaintiff the higher duty of care that adults dealing with
23 children owe to protect them from harm.

24 23. Defendants, by and through their agents, servants and employees, knew or
25 reasonably should have known of the Perpetrator's and Defendants' other pedophilic
26 and/or ephebophilic agents' dangerous and exploitive propensities and that they were unfit
27 agents. It was foreseeable that if Defendants did not adequately exercise or provide the
28 duty of care owed to children in their care, including but not limited to Plaintiff, the child

1 entrusted to Defendants' care would be vulnerable to sexual abuse by the Perpetrator and
2 Defendants' other pedophilic and/or ephebophilic agents.

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

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

1 capacity; and/or has incurred and will continue to incur expenses for medical and
2 psychological treatment, therapy, and counseling.

3 **THIRD CAUSE OF ACTION**

4 **NEGLIGENT SUPERVISION/FAILURE TO WARN**

5 **(Against All Defendants)**

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

8 27. Defendants had a duty to provide reasonable supervision of the Perpetrator and
9 Defendants' other pedophilic and/or ephebophilic agents, and to use reasonable care in
10 investigating the Perpetrator and Defendants' other pedophilic and/or ephebophilic agents.
11 Additionally, because Defendants knew or should have known of the heightened risk the
12 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents posed to all
13 children, Defendants had a heightened duty to provide reasonable supervision and
14 protection to children with whom Defendants allowed the Perpetrator and Defendants'
15 other pedophilic and/or ephebophilic agents to have contact and/or custody and control of;
16 and to provide adequate warning to the Plaintiff, the Plaintiff's family, minor students, and
17 minor parishioners of the Perpetrator's and Defendants' other pedophilic and/or
18 ephebophilic agents' dangerous propensities and unfitness.

19 28. Defendants, by and through their agents, servants and employees, knew or
20 reasonably should have known of the Perpetrator's and Defendants' other pedophilic
21 and/or ephebophilic agents' dangerous and exploitive propensities and that they were unfit
22 agents. Defendants also knew that if they failed to provide children who had contact with
23 the Perpetrator and Defendants' other pedophilic and/or ephebophilic agents sufficient
24 supervision and protection, those children would be vulnerable to sexual assaults by the
25 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents. Despite such
26 knowledge, Defendants negligently failed to supervise the Perpetrator and Defendants'
27 other pedophilic and/or ephebophilic agents in the position of trust and authority as a
28 Roman Catholic Priest, religious brother, religious instructor, counselor, school

1 administrator, school teacher, surrogate parent, spiritual mentor, emotional mentor, and/or
2 other authority figure, where he was able to commit the wrongful acts against the Plaintiff.
3 Defendants failed to provide reasonable supervision of the Perpetrator and Defendants'
4 other pedophilic and/or ephebophilic agents, failed to use reasonable care in investigating
5 the Perpetrator and Defendants' other pedophilic and/or ephebophilic agents, and failed to
6 provide adequate warning to Plaintiff and Plaintiff's family of the Perpetrator's and
7 Defendants' other pedophilic and/or ephebophilic agents' dangerous propensities and
8 unfitness. Defendants further failed to provide Plaintiff with adequate supervision and
9 protection, and failed to take reasonable measures to prevent future sexual abuse.

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

20 **FOURTH CAUSE OF ACTION**

21 **NEGLIGENT HIRING/RETENTION**

22 **(Against All Defendants)**

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

25 31. Defendants had a duty not to hire and/or retain the Perpetrator and Defendants'
26 other pedophilic and/or ephebophilic agents given their dangerous and exploitive
27 propensities.

28 32. Defendants, by and through their agents, servants and employees, knew or

1 reasonably should have known of the Perpetrator's and Defendants' other pedophilic
2 and/or ephebophilic agents' dangerous and exploitive propensities and/or that they were
3 unfit agents. Despite such knowledge, Defendants negligently hired and/or retained the
4 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents in the position of
5 trust and authority as a Roman Catholic Priest, religious brother, religious instructor,
6 counselor, school administrator, school teacher, surrogate parent, spiritual mentor,
7 emotional mentor, and/or other authority figure, where he was able to commit the wrongful
8 acts against the Plaintiff. Defendants failed to use reasonable care in investigating the
9 Perpetrator and/or Defendants' other pedophilic and/or ephebophilic agents and failed to
10 provide adequate warning to Plaintiff and Plaintiff's family of the Perpetrator's and
11 Defendants' other pedophilic and/or ephebophilic agents' dangerous propensities and
12 unfitness. Defendants further failed to take reasonable measures to prevent future sexual
13 abuse.

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

24 **FIFTH CAUSE OF ACTION**

25 **FRAUD**

26 **(Against All Defendants)**

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

1 35. Defendants knew and/or had reason to know of the sexual misconduct of the
2 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents.

3 36. Defendants misrepresented, concealed or failed to disclose information relating to
4 sexual misconduct of the Perpetrator and Defendants' other pedophilic and/or ephebophilic
5 agents as described herein, and Defendants continue to misrepresent, conceal, and fail to
6 disclose information relating to sexual misconduct of the Perpetrator and Defendants' other
7 pedophilic and/or ephebophilic agents as described herein.

8 37. Defendants knew that they misrepresented, concealed or failed to disclose
9 information relating to sexual misconduct of the Perpetrator and Defendants' other
10 pedophilic and/or ephebophilic agents.

11 38. Plaintiff justifiably relied upon Defendants for information relating to sexual
12 misconduct of the Perpetrator and Defendants' other pedophilic and/or ephebophilic
13 agents.

14 39. Defendants, with the intent to conceal and defraud, did misrepresent, conceal or fail
15 to disclose information relating to the sexual misconduct of the Perpetrator and
16 Defendants' other pedophilic and/or ephebophilic agents.

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

27 41. In addition, after Defendants misled Plaintiff to believe she was the Perpetrator's
28 only victim, Plaintiff suffered new emotional distress, shame and self-loathing. As is all too

1 common in many victims of childhood sexual abuse, she wondered what she had done
2 wrong to make her the Perpetrator's only target. Feeling horribly alone and ashamed after
3 the fraudulent representations, Plaintiff suffered through new injuries: a debilitating panic
4 attack and migraine, and repeated vomiting throughout the night after the meeting with Br.
5 Tom.

6 Finally, when Plaintiff discovered the fraud of Defendants, and continuing thereafter,
7 Plaintiff experienced recurrences of the above-described injuries. In addition, when
8 Plaintiff finally discovered the fraud of Defendants, and continuing thereafter, Plaintiff
9 experienced extreme and severe mental and emotional distress that Plaintiff had been the
10 victim of the Defendants' fraud; that Plaintiff had not been able to help other minors being
11 molested because of the fraud; and that Plaintiff had not been able because of the fraud to
12 receive timely medical treatment needed to deal with the problems Plaintiff had suffered
13 and continues to suffer as a result of the molestations.

14 **SIXTH CAUSE OF ACTION**

15 **FIDUCIARY/CONFIDENTIAL RELATIONSHIP FRAUD**

16 **AND CONSPIRACY TO COMMIT FRAUD**

17 **(Against All Defendants)**

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

20 43. Because of Plaintiff's young age, and because of the status of the Perpetrator as an
21 authority figure to Plaintiff, Plaintiff was vulnerable to the Perpetrator. The Perpetrator
22 sought Plaintiff out, and was empowered by and accepted Plaintiff's vulnerability. Plaintiff's
23 vulnerability also prevented Plaintiff from effectively protecting herself.

24 44. By holding the Perpetrator and Defendants' other pedophilic and/or ephebophilic
25 agents out as a qualified Roman Catholic clergy, religious brother, religious instructor,
26 counselor, school administrator, school teacher, surrogate parent, spiritual mentor,
27 emotional mentor, and/or other authority figure, and by undertaking the religious and/or
28 secular instruction and spiritual and emotional counseling of Plaintiff, Defendants held

1 special positions of trust and entered into a fiduciary and/or confidential relationship with
2 the minor Plaintiff.

3 45. Having a fiduciary and/or confidential relationship, Defendants had the duty to
4 obtain and disclose information relating to sexual misconduct of the Perpetrator and
5 Defendants' other pedophilic and/or ephebophilic agents.

6 46. Defendants misrepresented, concealed or failed to disclose information relating to
7 sexual misconduct of the Perpetrator and Defendants' other pedophilic and/or ephebophilic
8 agents, and Defendants continued to misrepresent, conceal, and/or fail to disclose
9 information relating to sexual misconduct of the Perpetrator and Defendants' other
10 pedophilic and/or ephebophilic agents as described herein.

11 47. Defendants knew that they misrepresented, concealed or failed to disclose
12 information relating to sexual misconduct of the Perpetrator and Defendants' other
13 pedophilic and/or ephebophilic agents.

14 48. Plaintiff justifiably relied upon Defendants for information relating to sexual
15 misconduct of the Perpetrator and Defendants' other pedophilic and/or ephebophilic
16 agents.

17 49. Defendants, in concert with each other and with the intent to conceal and defraud,
18 conspired and came to a meeting of the minds whereby they would misrepresent, conceal
19 or fail to disclose information relating to the sexual misconduct of the Perpetrator and/or
20 Defendants' other pedophilic and/or ephebophilic agents.

21 50. By so concealing, Defendants committed at least one act in furtherance of the
22 conspiracy.

23 51. As a direct result of Defendants' fraud and conspiracy, Plaintiff has suffered, and
24 continues 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 spiritually;
27 was prevented and will continue to be prevented from performing Plaintiff's daily activities
28 and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of

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

5 52. In addition, after Defendants misled Plaintiff to believe she was the Perpetrator's
6 only victim, Plaintiff suffered new emotional distress, shame and self-loathing. As is all too
7 common in many victims of childhood sexual abuse, she wondered what she had done
8 wrong to make her the Perpetrator's only target. Feeling horribly alone and ashamed after
9 the fraudulent representations, Plaintiff suffered through new injuries: a debilitating panic
10 attack and migraine, and repeated vomiting throughout the night after the meeting with Br.
11 Tom.

12 Finally, when Plaintiff discovered the fraud of Defendants, and continuing thereafter,
13 Plaintiff experienced recurrences of the above-described injuries. In addition, when
14 Plaintiff finally discovered the fraud of Defendants, and continuing thereafter, Plaintiff
15 experienced extreme and severe mental and emotional distress that Plaintiff had been the
16 victim of the Defendants' fraud; that Plaintiff had not been able to help other minors being
17 molested because of the fraud; and that Plaintiff had not been able because of the fraud to
18 receive timely medical treatment needed to deal with the problems Plaintiff had suffered
19 and continues to suffer as a result of the molestations.

20 SEVENTH CAUSE OF ACTION

21 BREACH OF FIDUCIARY DUTY AND/OR CONFIDENTIAL RELATIONSHIP

22 (Against All Defendants)

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

25 54. Because of Plaintiff's young age, and because of the status of the Perpetrator as an
26 authority figure to Plaintiff, Plaintiff was vulnerable to the Perpetrator. The Perpetrator
27 sought Plaintiff out, and was empowered by and accepted Plaintiff's vulnerability. Plaintiff's
28 vulnerability also prevented Plaintiff from effectively protecting herself.

1 55. By holding the Perpetrator and Defendants' other pedophilic and/or ephebophilic
2 agents out as a qualified Roman Catholic clergy, religious, religious instructor, counselor,
3 school administrator, school teacher, surrogate parent, spiritual mentor, emotional mentor,
4 and/or any other authority figure, by allowing the Perpetrator to have custody and control of
5 and/or contact with the Plaintiff, and by undertaking the religious and/or secular instruction
6 and spiritual and/or emotional counseling of Plaintiff, Defendants entered into a fiduciary
7 and/or confidential relationship with the minor Plaintiff.

8 56. Defendants and each of them breached their fiduciary duty to Plaintiff by engaging
9 in the negligent and wrongful conduct described herein.

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

20 **EIGHTH CAUSE OF ACTION**

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

22 **(Against All Defendants)**

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

25 59. Defendants breached their duty to take reasonable protective measures to protect
26 Plaintiff and other minor parishioners and/or students from the risk of childhood sexual
27 abuse by the Perpetrator and/or Defendants' other pedophilic and/or ephebophilic agents,
28 such as the failure to properly warn, train, or educate Plaintiff, her parents, Defendants'

1 agents, employees and volunteers, and other minor parishioners and/or students about
2 how to avoid such a risk and/or defend himself or herself if necessary, pursuant to Juarez
3 v. Boy Scouts of America, Inc., 97 Cal.Rptr.2d 12, 81 Cal.App.4th 377 (2000).

4 Defendants knew, or in the exercise of reasonable diligence should have known, of
5 the general risk of sexual assaults against children and, specifically, of the Perpetrator's
6 and Defendants' other pedophilic and/or ephebophilic agents' propensities to commit, and
7 history of committing, sexual abuse of children, and that an undue risk to children in their
8 custody and care, such as Plaintiff, would exist because of this propensity to commit
9 sexual assaults, and the history of sexual assaults against children, unless Defendants
10 adequately taught, educated, secured, oversaw, and maintained students, including
11 Plaintiff, as well as other children in the custody and control of, or in contact with, Catholic
12 clergy and Defendants' other pedophilic and ephebophilic agents. Defendants were put on
13 actual and/or constructive notice, at least as early as 1964, that the Perpetrator and
14 Defendants' other pedophilic and/or ephebophilic agents were sexually assaulting children
15 at countless locations, including Santa Barbara County. From that date forward,
16 Defendants repeatedly and negligently ignored complaints from victims and/or their
17 parents, as well as warnings from Catholic clergy, that pedophilic and/or ephebophilic
18 Catholic clergy were assaulting children in, among other locations, Santa Barbara County.

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

1 assaults around Santa Barbara since at least 1936, Defendants had a duty to take the
2 aforementioned steps.

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

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

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

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

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

10 **NINTH CAUSE OF ACTION**

11 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

12 **(Against all Defendants)**

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

15 62. Defendants' conduct was extreme and outrageous and was intentional or done
16 recklessly. Defendants knew or should have known the Perpetrator and Defendants' other
17 pedophilic and/or ephebophilic agents were spending time in the company of and
18 assaulting numerous children, including Plaintiff, around Santa Barbara and other
19 locations, including on school grounds, in the parishes, and in the Perpetrators' rectory
20 rooms. Defendants also knew or should have known the Perpetrator and Defendants'
21 other pedophilic and/or ephebophilic agents were high risks to all children as Defendants
22 had received numerous complaints and other notice of prior acts of childhood sexual abuse
23 by the Perpetrator and Defendants' other pedophilic and/or ephebophilic agents, and had
24 sent the Perpetrator and/or Defendants' other pedophilic and/or ephebophilic agents for
25 treatment for their pedophilia, prior to and/or after assigning them to work in Santa
26 Barbara. Given their knowledge of numerous prior acts of abuse by the Perpetrator and
27 Defendants' other pedophilic and/or ephebophilic agents, Defendants knew or should have
28 known that every child exposed to the Perpetrator and Defendants' other pedophilic and/or

1 ephebophilic agents, including Plaintiff, was substantially certain to be assaulted by the
2 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents. Defendants
3 knew or should have known, and had the opportunity to learn of, the intentional and
4 malicious conduct of the Perpetrator and Defendants' other pedophilic and/or ephebophilic
5 agents, and thereby ratified and joined in said conduct by failing to terminate, discharge, or
6 at least discipline the Perpetrator and Defendants' other pedophilic and/or ephebophilic
7 agents, and/or by failing to prevent them from having contact with children. The conduct of
8 Defendants in confirming, concealing and ratifying that conduct was done with knowledge
9 that Plaintiff's emotional and physical distress would thereby increase, and was done with a
10 wanton and reckless disregard of the consequences to Plaintiff and other children in their
11 custody and control.

12 63. As a result of Defendants' conduct, Plaintiff experienced and continues to
13 experience severe emotional distress resulting in bodily harm. As a result of the
14 statements made to Plaintiff by Defendants regarding their supposed inability to identify a
15 possible Perpetrator named "Ed" or "Sam," Plaintiff has suffered new emotional distress
16 and injury.

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

27 In addition, when Plaintiff discovered the recent intentional betrayal and lies of
28 Defendants, and continuing thereafter, Plaintiff experienced recurrences of the above-

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

9 **TENTH CAUSE OF ACTION**

10 **(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)**

11 **(Against All Defendants)**

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

14 66. Defendants knew or should have known that their failure to exercise reasonable
15 care in the selection, approval, employment and supervision of the Perpetrator and
16 Defendants' other pedophilic and/or ephebophilic agents would cause Plaintiff severe
17 emotional distress. Because of the foreseeability of sexual assaults by the Perpetrator
18 and Defendants' other pedophilic and/or ephebophilic agents against Plaintiff and other
19 children, Defendants breached their duty of care in engaging in the conduct referred to in
20 the preceding paragraphs.

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

1 foreseeability of sexual assaults by the Perpetrator and Defendants' other pedophilic
2 and/or ephebophilic agents against Plaintiff and other children, Defendants breached their
3 duty to exercise reasonable care in failing to provide adequate supervision to Plaintiff and
4 other children in their custody and control, and in failing to disclose information to Plaintiff,
5 her family, and the general public relating to sexual misconduct of the Perpetrator and
6 Defendants' other pedophilic and/or ephebophilic agents.

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

14 69. Plaintiff experienced and continues to experience severe emotional distress
15 resulting in bodily harm. As a result of the negligent misrepresentations told Plaintiff by
16 Defendants regarding their supposed inability to identify a possible Perpetrator named "Ed"
17 or "Sam," Plaintiff has suffered new emotional distress and injury.

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

28 In addition, when Plaintiff discovered the recent negligent misrepresentations of

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

10 **ELEVENTH CAUSE OF ACTION**

11 **VIOLATION OF PENAL CODE § 11166**

12 **(Against All Defendants)**

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

15 72. Under the Child Abuse and Neglect Reporting Act, Defendants, by and through their
16 employees and agents, were "child care custodians" and were "clergy members" under a
17 statutory duty to report known or suspected incidences of sexual molestation or abuse of
18 minors to a child protective agency, pursuant to California Penal Code § 11164.

19 73. Defendants knew, or should have known in the exercise of reasonable diligence,
20 that the Perpetrator and Defendants' other pedophilic and/or ephebophilic agents had
21 sexually molested, abused, or caused touching, battery, harm and other injuries to Plaintiff,
22 who was a minor, and to other minors, giving rise to a duty to report such conduct under §
23 11166 of the California Penal Code.

24 74. By failing to report the continuing molestations known by Defendants, and each of
25 them, and by ignoring the fulfillment of the mandated compliance with the reporting
26 requirements provided under California Penal Code § 11166, Defendants created the risk
27 and danger contemplated by the Child Abuse and Neglect Reporting Act, and as a result,
28 unreasonably and wrongfully exposed Plaintiff and other minors to the molestation as

1 alleged herein, thereby breaching Defendants' duty of care to Plaintiff.

2 75. Plaintiff was of the class of persons for whose protection California Penal Code
3 § 11166 was specifically adopted to protect.

4 76. Had Defendants adequately performed their duties under § 11166 of the California
5 Penal Code, and reported the molestation of Plaintiff and other minors, the report would
6 have resulted in the involvement of trained child sexual abuse case workers for the
7 purposes of preventing harm and further harm to Plaintiff and other minors, and preventing
8 and/or treating the injuries and damages suffered by Plaintiff as alleged herein.

9 77. As a proximate result of Defendants' failure to follow the mandatory reporting
10 requirements of California Penal Code § 11166, the Defendants wrongfully denied and
11 restricted Plaintiff and other minors from the protection of child protection agencies which
12 would have changed the then-existing arrangements and conditions, which provided the
13 access and opportunities for the molestation of Plaintiff.

14 78. The physical, mental, and emotional damages and injuries resulting from the sexual
15 molestation of Plaintiff alleged herein, were the types of occurrences and injuries the Child
16 Abuse and Neglect Reporting Act was designed to prevent.

17 79. Defendants continue to violate these statutory sections because of their continued
18 failure to report the abuse known to them.

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

1 **TWELFTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION –**

3 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200**

4 **(Against all Defendants)**

5 81. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
6 forth herein.

7 82. At all times herein mentioned, Defendants conspired and engaged in unlawful,
8 unfair or fraudulent business acts, within the meaning of Business & Professions Code §
9 17200.

10 83. At all times herein mentioned, Defendants were and are engaged in nonprofit
11 business activities, including but not limited to: providing public service which the Catholic
12 Church refers to as its “ministry”; operating hospitals, schools, universities, orphanages, or
13 other institutions; providing religious, psychological, emotional and social counseling;
14 conducting various charitable activities and providing services whether or not within the
15 scope of 26 U.S.C. § 501(c)(3); and soliciting charitable donations.

16 84. At all times herein mentioned, Defendants have as a significant source of revenue
17 the receipt of charitable donations from persons who worship or associate themselves with
18 the Catholic Church.

19 85. At all times herein mentioned, Defendants conducted and continue through the
20 present to conduct their respective business affairs as set forth in Paragraphs 82 through
21 84 in such a manner as to willfully and negligently: foster an environment conducive to
22 predatory pedophilic and ephebophilic behavior; conceal from the general public the sexual
23 assaults committed by, the identities of, and the pedophilic and ephebophilic tendencies of,
24 Catholic clergy; protect the pedophilic and ephebophilic clergy from civil and criminal
25 prosecution; respond to allegations of sexual misconduct against the Catholic clergy with
26 blanket denials and/or the creation of entities controlled by the Church hierarchy that are
27 misrepresented as taking appropriate action but instead perpetuate the concealment of
28 sexual misconduct; represent to the Catholic laity and the general public that appropriate

1 action is being taken by the Church concerning allegations of sexual misconduct and child
2 molestation when in fact it is engaging in concealment and suppression of the truth; place
3 predatory clergy into communities with children without any warning to those communities.

4 86. The activities described in Paragraph 85 violate various civil and criminal laws of
5 California and of the United States;

6 87. The activities described in Paragraph 85 violate various civil and criminal laws of
7 California and of the United States, including the duty to report incidents of childhood
8 sexual abuse as required by Penal Code § 11166, as set forth above in the Ninth Cause of
9 Action;

10 88. The activities described in Paragraph 85 offend public policy; are immoral, unethical,
11 oppressive, and unscrupulous; are substantially injurious to persons who utilize the
12 services described in Paragraph 85; and are undertaken without any valid reason,
13 justification or motive.

14 89. Defendants all conducted their business activities in such a way that members of
15 the public are likely to be deceived regarding those business activities.

16 90. As a result of the acts of unfair competition by Defendants, Plaintiff has suffered,
17 and continues to suffer great pain of mind and body, shock, emotional distress, physical
18 manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace,
19 humiliation, and loss of enjoyment of life; has suffered and continues to suffer spiritually;
20 was prevented and will continue to be prevented from performing Plaintiff's daily activities
21 and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of
22 earnings and earning capacity; and/or has incurred and will continue to incur expenses for
23 medical and psychological treatment, therapy, and counseling.

24 91. As a further result of the acts of unfair competition by Defendants, Plaintiff further
25 request injunctive relief, prohibiting Defendants from, among other things: allowing their
26 pedophilic/ephebophilic agents to have any contact with children; transferring their
27 pedophilic/ephebophilic agents to new communities whose citizens are unaware of the risk
28 to children posed by said agents; failing/refusing to warn and/or concealing from the

1 general public when Defendants have transferred a pedophilic/ephebophilic agent into their
2 midst; concealing from law enforcement and the general public the identities of their
3 pedophilic/ephebophilic agents; and/or concealing from the public complaints or any other
4 source of information indicating Defendants' agents' pedophilic/ephebophilic tendencies.
5 As a proximate result of these injuries, Plaintiff has suffered general and special damages
6 in an amount in excess of the jurisdictional minimum of this Court.

7 **THIRTEENTH CAUSE OF ACTION**

8 **FRAUD AND DECEIT**

9 **(Against All Defendants)**

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

12 93. The Perpetrator and Defendants' other pedophilic and/or ephebophilic agents held
13 himself out to Plaintiff as a Roman Catholic Priest, religious brother, religious instructor,
14 counselor, school administrator, school teacher, surrogate parent, spiritual mentor,
15 emotional mentor, and/or other authority figure. The Perpetrator and Defendants' other
16 pedophilic and/or ephebophilic agents represented to Plaintiff and Plaintiff's parents that he
17 would counsel and guide Plaintiff with her educational, spiritual, and/or emotional needs.

18 94. These representations were made by the Perpetrator and Defendants' other
19 pedophilic and/or ephebophilic agents with the intent and for the purpose of inducing
20 Plaintiff and Plaintiff's parents to entrust the educational, spiritual and physical well being of
21 Plaintiff with the Perpetrator and Defendants' other pedophilic and/or ephebophilic agents.

22 95. The Perpetrator and Defendants' other pedophilic and/or ephebophilic agents
23 misrepresented, concealed or failed to disclose information relating to his true intentions to
24 Plaintiff and Plaintiff's parents when they entrusted Plaintiff to his care, which were to
25 sexually molest and abuse Plaintiff. Plaintiff justifiably relied upon the Perpetrator's and
26 Defendants' other pedophilic and/or ephebophilic agents' representations.

27 96. The Perpetrator and Defendants' other pedophilic and/or ephebophilic agents were
28 employees, agents, and/or representatives of Defendants. At the time he fraudulently

1 induced Plaintiff and Plaintiff's parents to entrust the care and physical welfare of Plaintiff
2 to the Perpetrator and Defendants' other pedophilic and/or ephebophilic agents, the
3 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents were acting
4 within the course and scope of their employment with Defendants.

5 97. Defendants are vicariously liable for the fraud and deceit of the Perpetrator and
6 Defendants' other agents.

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

17 99. In addition, when Plaintiff finally discovered the fraud of Defendants, and continuing
18 thereafter, Plaintiff experienced recurrences of the above-described injuries. In addition,
19 when Plaintiff finally discovered the fraud of Defendants, and continuing thereafter, Plaintiff
20 experienced extreme and severe mental and emotional distress that Plaintiff had been the
21 victim of the Defendants' fraud; that Plaintiff had not been able to help other minors being
22 molested because of the fraud; and that Plaintiff had not been able because of the fraud to
23 receive timely medical treatment needed to deal with the problems Plaintiff had suffered
24 and continues to suffer as a result of the molestations.

25 **FOURTEENTH CAUSE OF ACTION**

26 **PREMISES LIABILITY**

27 **(Against All Defendants)**

28 100. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set

1 forth herein.

2 101. At all times herein mentioned, Defendants were in possession of the property where
3 the Plaintiff was groomed and assaulted by the Perpetrator, and had the right to manage,
4 use and control that property.

5 102. At all times herein mentioned, Defendants knew that the Perpetrator and
6 Defendants' other pedophilic and/or ephebophilic agents had a history of committing
7 sexual assaults against children, and that any child at, among other locations in Santa
8 Barbara, the Mission and St. Anthony's, was at risk to be sexually assaulted by the
9 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents.

10 103. Defendants knew or should have known that the Mission and St. Anthony's had a
11 history of grooming of and/or sexual assaults against children committed by the Perpetrator
12 and/or Defendants' other pedophilic and/or ephebophilic agents and that any child at,
13 among other locations in Santa Barbara, the Mission and St. Anthony's, was at risk to be
14 sexually assaulted. It was foreseeable to Defendants that the Perpetrator and Defendants'
15 other pedophilic and/or ephebophilic agents would sexually assault children if they
16 continued to allow the Perpetrator and/or Defendants' other pedophilic and/or ephebophilic
17 agents to teach, supervise, instruct, care for, and have custody and control of and/or
18 contact with children.

19 104. At all times herein mentioned, Defendants knew or should have known the
20 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents were repeatedly
21 committing sexual assaults against children.

22 105. It was foreseeable to Defendants that the sexual assaults being committed by the
23 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents would continue if
24 Defendants continued to allow the Perpetrator and Defendants' other pedophilic and/or
25 ephebophilic agents to teach, supervise, instruct, care for, and have custody of and/or
26 contact with young children.

27 106. Because it was foreseeable that the sexual assaults being committed by the
28 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents would continue if

1 Defendants continued to allow them to teach, supervise, instruct, care for, and have
2 custody of and/or contact with young children, Defendants owed a duty of care to all
3 children, including Plaintiff, exposed to the Perpetrator and/or Defendants' other pedophilic
4 and/or ephebophilic agents. Defendants also owed a heightened duty of care to all
5 children, including Plaintiff, because of their young age.

6 107. By allowing the Perpetrator and/or Defendants' other pedophilic and/or ephebophilic
7 agents to teach, supervise, instruct, care for, and have custody of and/or contact with
8 young children, and by failing to warn children and their families of the threat posed by the
9 Perpetrator and Defendants' other pedophilic and/or ephebophilic agents, Defendants
10 breached their duty of care to all children, including Plaintiff.

11 108. Defendants negligently used and managed the Mission and St. Anthony's, and
12 created a dangerous condition and an unreasonable risk of harm to children by allowing
13 the Perpetrator and Defendants' other pedophilic and/or ephebophilic agents to teach,
14 supervise, instruct, care for and have custody of and/or contact with young children at,
15 among other locations, the Mission and St. Anthony's.

16 109. As a result of the dangerous conditions created by Defendants, numerous children
17 were sexually assaulted by the Perpetrator and Defendants' other pedophilic and/or
18 ephebophilic agents.

19 110. The dangerous conditions created by Defendants were the proximate cause of
20 Plaintiff's injuries and damages.

21 111. As a result of these dangerous conditions, Plaintiff has suffered, and continues to
22 suffer great pain of mind and body, shock, emotional distress, physical manifestations of
23 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of
24 enjoyment of life; has suffered and continues to suffer spiritually; was prevented and will
25 continue to be prevented from performing Plaintiff's daily activities and obtaining the full
26 enjoyment of life; has sustained and will continue to sustain loss of earnings and earning
27 capacity; and/or has incurred and will continue to incur expenses for medical and
28 psychological treatment, therapy, and counseling. As a proximate result of these injuries,

1 Plaintiff has suffered general and special damages in an amount in excess of the
2 jurisdictional minimum of this Court.

3 **FIFTEENTH CAUSE OF ACTION**

4 **PROCURING OR MAKING A CHILD AVAILABLE TO ANOTHER**

5 **(Against All Defendants)**

6 112. Plaintiff incorporates all paragraphs of this First Amended Complaint as if fully set
7 forth herein.

8 113. Plaintiff, at the time of the abuse by the Perpetrator alleged herein, was
9 approximately 6 years old.

10 114. Defendants, by and through their agents, servants and employees, were aware that
11 their employees and member priests, pastors, and residents at St. Anthony's and the Old
12 Mission were cognizant of the special needs of the vulnerable, needy, and impressionable
13 children entrusted to their care. Defendants knew, or should have known, that the children
14 could be easily influenced and trusting of those adults in whose care they had been placed,
15 and were vulnerable to the suggestions and desires of those in whose care they have been
16 placed.

17 115. Plaintiff is informed and believes, and on that basis alleges that Defendants, at all
18 relevant times, were responsible for providing traditional church and religious activities,
19 including but not limited to emotional growth and spiritual guidance, and were responsible
20 for the supervision of Plaintiff in her daily activities.

21 116. Defendants created and fostered an environment and culture in which the
22 Perpetrator, as a Franciscan brother, would occupy a special position of complete trust and
23 confidence. At the heart of this environment and culture created by Defendants was the
24 Perpetrator's liberty to exercise authority and control with regard to children of the parish.
25 Defendants encouraged, caused, induced, and persuaded the parishioners, including
26 Plaintiff, to develop a close, trusting, and special relationship with the Perpetrator, and to
27 engage in individual and confidential counseling with the Perpetrator. Moreover,
28 Defendants encouraged, caused, induced, and persuaded the parishioners to partake in

1 activities with the Perpetrator. This intentional conduct of Defendants and their wilful
2 failure to report the Perpetrator's sexual misconduct to the appropriate law enforcement
3 authorities or any violations pertaining to the abuse and/or mistreatment of the children in
4 their care and custody, violates child abuse reporting statutes. As such, Defendants'
5 intentional conduct also constitutes negligence per se.

6 117. Defendants were aware that the Perpetrator would have extensive and
7 unsupervised contact with children, including Plaintiff.

8 118. Plaintiff is informed and believes, and on that basis alleges that Defendants were
9 aware of the extremely high recidivism rate of individuals who had previously committed
10 childhood sexual abuse, and that deviant pedophilic and ephebophilic tendencies could not
11 be "cured." As a result, Defendants knew that it was a virtual certainty that if the
12 Perpetrator was allowed continued access to children, the Perpetrator would engage in
13 further acts of childhood sexual abuse.

14 119. Plaintiff alleges that Defendants knew or in the exercise of reasonable diligence
15 should have known that the Perpetrator, as he befriended and supervised the young
16 parishioners, Santa Barbara Girl's Club members, and other children, would invite the
17 children into various locations at the Old Mission and St. Anthony's Seminary, including but
18 not limited to the room where the parish organ was located, as well as the living quarters of
19 the Perpetrator and/or other Franciscans.

20 120. Defendants, by and through their agents, servants and employees, knew that the
21 Perpetrator was committing lewd and lascivious acts with children at these and other
22 locations around Santa Barbara, yet Defendants continued to provide the Perpetrator with
23 a new supply of child victims by facilitating, encouraging, causing, inducing and persuading
24 them to spend time with the Perpetrator, including in the instance of Plaintiff by repeatedly
25 observing and allowing to continue the Perpetrator's pedophilic peep-style show
26 exploitation of Plaintiff on the grounds of St. Anthony's and/or the Old Mission. Defendants
27 encouraged the growth of a cult of personality around the Perpetrator by encouraging,
28 causing, inducing, and persuading children to associate with the Perpetrator through his

1 affiliations with local organizations such as the Santa Barbara Girl's Club, to seek personal
2 and academic counseling and guidance from the Perpetrator, and to spend time with the
3 Perpetrator socially.

4 121. Furthermore, Defendants, by and through their agents, servants and employees,
5 knew or had reason to know or were otherwise on notice of the unlawful sexual conduct of
6 the Perpetrator and/or his propensity for such conduct. Nonetheless, Defendants
7 encouraged, caused, induced and persuaded children to have contact with the Perpetrator
8 and to be in an unsupervised environment with the Perpetrator on a regular basis in or
9 around 1964. Because this intentional conduct of supplying the Perpetrator with a supply
10 of victims is in violation of California Penal Code § 266(j), it also constitutes negligence per
11 se.

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

20

21 WHEREFORE, Plaintiff prays for damages; injunctive relief; attorney's fees; statutory/civil
22 penalties according to law; and such other relief as the court deems appropriate and just.

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JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

DATE: August 6, 2008

NYE, PEABODY, STIRLING & HALE, LLP

By:



DAVID L. NYE
TIMOTHY C. HALE