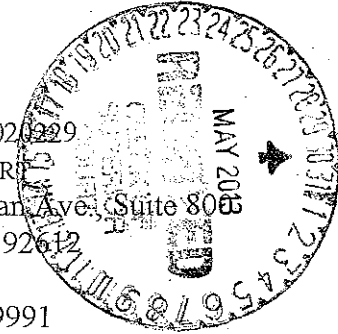


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6 Attorneys for Plaintiff

7  
8 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
9 **IN AND FOR THE COUNTY OF COCONINO**

10 JANE J.P. DOE, a single woman,

Case No.: CV2013-00360

11 Plaintiff,

COMPLAINT

12 v.

13  
14 THE ROMAN CATHOLIC CHURCH  
15 OF THE DIOCESE OF GALLUP, a  
16 corporation sole; THE FRANCISCAN  
17 FATHERS, PROVINCE OF OUR  
18 LADY OF GUADALUPE; a New  
19 Mexico corporation; THE  
20 FRANCISCAN FATHERS,  
21 PROVINCE OF ST. JOHN THE  
22 BAPTIST, an Ohio Corporation;  
23 BROTHER MARK SHOMACK,  
24 OFM, aka BROTHER MARK  
25 SCHORNACK, OFM a Roman  
26 Catholic priest; JOHN DOE 1-100;  
27 JANE DOE 1-100; and Black & White  
28 Corporations 1-100,

Defendants.

Plaintiff, for his complaint, states and alleges the following:

## JURISDICTION

1. Plaintiff, Jane J.P. Doe, is a resident of Gallup, New Mexico. The acts, events, and or omissions occurred in Arizona. The cause of action arose in Arizona.
2. Defendant The Roman Catholic Church of the Diocese of Gallup (Gallup) is a corporation sole. The presiding Bishops of the Diocese of Gallup during the relevant times at issue in this Complaint were Bishop Bernard T. Espelage (1940-1969), Bishop Jerome J. Hastrich (1969 – 1990), Bishop Donald Edmond Pelotte (1990 – 2008), and Bishop James S. Wall (2009 – present). Bishop Wall is presently governing Bishop of the Diocese of Gallup.
3. The Diocese of Gallup is incorporated in the State of New Mexico and has its principle place of business in Gallup, New Mexico. The territory of the Diocese of Gallup encompasses 55,000 square miles including the Northeastern portion of Arizona. At the time of the alleged acts or omission, the Diocese of Gallup included portions of North Central Arizona. The Diocese of Gallup was canonically erected on December 16, 1939.
4. Defendant Gallup, acting through its priests, Bishops, Archbishops, employees, and agents of any kind caused acts, events, or omissions to occur in Navajo County, Arizona out of which these claims arise.
5. The Diocese of Gallup owns, operates, and controls priests and parishes in Coconino County, Arizona.
6. The Franciscan Fathers, Province of Our Lady of Guadalupe (Franciscan Friars), a religious order of the Roman Catholic Church, at all times alleged was and is, a corporation, organized under the laws of the State of New Mexico, having its principal place of business in New Mexico.

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7. The Franciscan Friars, Province of St. John the Baptist (Franciscan Friars), a religious order of the Roman Catholic Church, at all times alleged was and is a corporation, organized under the laws of the State of Ohio, having its principal place of business in Ohio.
8. On January 3, 1985, the Franciscan Fathers, Province of Our Lady of Guadalupe was formally erected by the Minister General of the Friars Minor. At the time of the newly created Province of Our Lady of Guadalupe, Franciscan Friars from the Province of St. John the Baptist were living and working among the Navajo and Hispanic communities in Arizona. Many of the friars from the Ohio province became founding members of the Province of Our Lady of Guadalupe.
9. The parish, missions, and or Catholic schools at Window Rock, Arizona and Kayenta, Arizona are owned, operated, and controlled by the Diocese of Gallup and or the Franciscan Friars.
10. Defendant Brother Mark Schomack, aka Brother Mark Schornack is a Roman Catholic priest and member of The Conventual Franciscan Friars of Our Lady of Guadalupe. At all times alleged, the Bishop of the Diocese of Gallup retained power and authority over Brother Schomack.
11. At all times alleged, Defendant Brother Mark Schormack was a Roman Catholic priest who caused acts, events, or omissions to occur in Arizona out of which these claims arise. At all times alleged, Defendant Schomack was employed by and was the actual or apparent agent of Defendants Diocese of Gallup and or the Franciscan Friars.
12. Defendant Schomack was and is under the supervision, employ, or control of Defendant Gallup and or the Franciscan Friars when he committed the wrongful acts, events, and omission alleged.

1 13. At all times alleged, Defendants Gallup, the Franciscan Friars, and Brother  
2 Schomack, their priests, Bishops, Archbishops, employees and agents were  
3 acting within their course and scope of employment or alternatively, acting  
4 within their actual or apparent authority. The wrongful acts, events, or  
5 omissions committed by Defendants Gallup, the Franciscan Friars, and  
6 Schomack and by those priests, Bishops, Archbishops, employees and agents  
7 who acted individually and in conspiracy with the other to hide and cover up  
8 Schomack's history, pattern, and propensity to abuse Catholic children were  
9 done within the course and scope of their authority with their employing  
10 entities, or incidental to that authority and were acquiesced in, affirmed, and  
11 ratified by those entities.  
12

13 14. Plaintiff is informed and believes, and on that basis alleges, that at all times  
14 mentioned herein, there existed a unity of interest and ownership among  
15 Defendants and each of them, such that any individuality and separateness  
16 between Defendants, and each of them, ceased to exist. Defendants, and  
17 each of them, were the successors-in-interest and / or alter egos of the other  
18 Defendants, and each of them, in that they purchased, controlled, dominated  
19 and operated each other without any separate identity, observation of  
20 formalities, or other manner of division. To continue maintaining the façade  
21 of a separate and individual existence between and among Defendants, and  
22 each of them, would serve to perpetuate a fraud and an injustice.  
23

24 15. Defendants JOHN DOE 1-100, JANE DOE 1-100, and BLACK AND  
25 WHITE CORPORATIONS 1-100, are fictitious names designating an  
26 individual or individuals or legal entities not yet identified who have acted in  
27 concert with the named Defendants either as principals, agents, or co-  
28 participants whose true names Plaintiffs may insert when identified.

1 16. Plaintiff is informed and believes, and on that basis alleges, that at all times  
2 alleged herein, Defendants and each of them and JOHN DOES 1-100, JANE  
3 DOES 1-100, and BLACK and WHITE CORPORATIONS 1-100, inclusive,  
4 were the agents, representatives and or employees of each and every other  
5 Defendant. IN do the things hereinafter alleged, Defendants, and each of  
6 them, JOHN DOES 1-100, JANE DOES 1-100, and BLACK and WHITE  
7 CORPORATIONS 1-100, inclusive, were acting within the course and scope  
8 of said alternative personality, capacity, indemnity, agency, representation  
9 and or employment and were within their actual or apparent authority.  
10

11 17. Plaintiff is informed and believes, and on that basis alleges, that all times  
12 mention herein, Defendants, and each of them, JOHN DOES 1-100, JANE  
13 DOES 1-100, and BLACK and WHITE CORPORATIONS 1-100, inclusive,  
14 were the trustees, partners, servants, agents, joint venturers, shareholders,  
15 contractors, and or employees of each and every other Defendant, and the  
16 acts and omissions alleged were done by them, acting individually, through  
17 such capacity and with the scope of their authority, and with the permission  
18 and consent of each and every other Defendant and that said conduct was  
19 thereafter ratified by each and every other Defendant, and that each of them  
20 is jointly and severally liable to Plaintiff.  
21

### 22 **GENERAL ALLEGATIONS**

23 **Defendants Gallup and the Franciscan Friars allowed**  
24 **Brother Schomack to relocate to remote parts of Arizona**  
25

26 18. Plaintiff incorporates all other paragraphs.

27 19. Brother Mark Schomack was ordained a Roman Catholic priest.  
28

1 20. As a Roman Catholic Priest or cleric in the Diocese of Gallup Brother Mark  
2 Schomack was required to have the permission of the Bishop of the Diocese  
3 of Gallup before being allowed to serve in the Diocese of Gallup.

4  
5 21. The Bishop of Gallup assigned Brother Mark Schomack to Catholic school,  
6 missions, and parishes in Arizona.

7 22. Defendants Diocese of Gallup, the Franciscan Friars, and Schomack, through  
8 its bishop, priests, and agents of any kind, knew or should have known that  
9 Brother Mark Schomack would have contact with Catholic children while  
10 assigned to Catholic Churches, schools, and missions throughout Northern  
11 Arizona.

12 **Schomack sexually abused Jane J.P. Doe**

13 **When she was a young girl living in rural Arizona**

14 23. Plaintiff incorporates all other paragraphs.

15 24. To cope with the trauma of sexual abuse Jane J.P. Doe involuntarily and  
16 unconsciously blocked the memories of sexual abuse from his mind.

17 25. In the fall of 2011, Jane J.P. Doe began to recover some of the memories of  
18 sexual abuse by Brother Mark Schomack.

19 26. Jane J.P. Doe received education and instruction in the Catholic faith from  
20 Defendants, including Brother Schomack.

21 27. Brother Mark Schomack gave Jane J.P. Doe special benefits. Brother Mark  
22 Schomack gave Jane J.P. Doe toys, candy, and other special treats. Jane J.P.  
23 Doe was also visit and see his living quarters and other parts of the parish  
24 that were off limits to children.

25  
26 28. Brother Mark Schomack sexually abused Jane J.P. Doe when she was a  
27 young girl at the Catholic church and school located in St. Michael's,  
28 Arizona. The sexual abuse included, but was not limited to, touching and  
penetration.



1           Archbishops, Cardinals and the Holy Father allowing a priest accused of  
2           sexual abuse to be transferred to a new assignment without ever disclosing  
3           the priest's history of sexual abuse.

4           34. Defendants Gallup, the Franciscan Friars, and Schomack acted individually  
5           and in concert with one another and others including but not limited to other  
6           priests, bishops, archbishops, diocese, and archdiocese to engage in a pattern  
7           and practice of protecting priests who sexually abused parishioners and  
8           children by ratifying, concealing, failing to report, or failing to investigate  
9           clergy sexual abuse, molestation, and or sexual misconduct.

10           **Defendants are estopped from alleging the statute of limitations as a defense**  
11           **because they fraudulently concealed Brother Schomacks abuse of Catholic**  
12           **children and his propensity to sexually abuse Catholic Children.**

13           35. Plaintiff incorporates all other paragraphs.

14           36. Defendant Gallup and the Franciscan Friars, through its priests, Bishops,  
15           Archbishops, and agents of any kind assigned Brother Mark Schomack to  
16           parishes throughout Northern Arizona, including the Catholic churches  
17           located in St. Michael's, Arizona and Kayenta, Arizona.

18           37. By October of 1952, Defendants Gallup, the Franciscan Friars, and Schomack  
19           knew or should have known that Brother Mark Schomack sexually abused  
20           Catholic children.

21           38. Defendants, and each of them, did not reveal to the congregation of faithful  
22           Catholics, including Plaintiff and his family, that Brother Mark Schomack  
23           sexually abused Catholic children.

24           39. Defendants, and each of them, knew or should have known that Brother Mark  
25           Schomack continued his sinful habit of playing with boys while assigned to  
26           parishes throughout Northern Arizona.  
27  
28



1 40. Defendants, and each of them, individually and in conspiracy with the other  
2 priests, bishops, archbishops, and agents of any kind, led the congregation of  
3 faithful Catholics in the Navajo Nation and specifically at St. Michael's,  
4 Arizona and Kayenta, Arizona to believe that Brother Mark Schomack was  
5 fit to serve as a Roman Catholic priest ministering to Catholic children.

6  
7 41. In keeping with the orders, commandments, directives, policies, or procedures  
8 of the Roman Catholic Church mandated by the priests, Bishops,  
9 Archbishops, Cardinals, Vatican, the Holy See, the Holy Office, and the Holy  
10 Father requiring that all matters and details regarding clergy sexual abuse be  
11 kept absolutely secret, Defendants Gallup and Hageman individual and in  
12 conspiracy with each other and other priest, bishops, archbishops, diocese,  
13 and agents of any kind, did not reveal to the congregation of faithful  
14 Catholics in the Diocese of Gallup and its parishes, including Plaintiff and  
15 her family, that Brother Mark Schomack sexually abused Catholic children.

16 42. Defendants are equitably estopped from alleging the statute of limitations as a  
17 defense in this case because of the inequitable conduct of Defendants,  
18 because of their attempts to fraudulently conceal the abuse and breaches of  
19 fiduciary duties.

20  
21 43. All Defendants, with their pattern and practice of ignoring, covering up, and  
22 or fraudulently concealing Brother Schomack's sexual abuse of Jane J.P. Doe  
23 and other Catholic children, demonstrated deliberate indifference, conscious  
24 disregard, and reckless disregard to Jane J.P. Doe's mental and physical well-  
25 being.

26 44. All Defendants' pattern and practice of ignoring, covering up, and  
27 fraudulently concealing repeated and frequent sexual abuse perpetrated by  
28 Brother Schomack and other clergy was done pursuant to the Catholic

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Church's official and unofficial policies and practices.

45. The allegations set forth in the General Allegations render the Defendants liable for Brtother Schomack's sexual abuse of Jane J.P. Doe and other children because such abuse was and should have been foreseeable and reasonable precautionary measures would have prevented sexual abuse by Brother Schomack and other clergy within the purview and/or control of Defendants.

**COUNT I**

**SEXUAL ASSAULT / SEXUAL ABUSE / MOLESTATION**

**(A.R.S. § 13-1406 and the common law)**

**(Father Mark Schomack)**

- 46. Plaintiff incorporates all other paragraphs.
- 47. Defendant Brother Mark Schomack intentionally, knowingly, recklessly, or negligently engaged in sexual conduct with Jane J.P. Doe.
- 48. Defendant Brother Schomack intentionally, knowingly, recklessly, or negligently engaged in sexual conduct with Jane J.P. Doe without her consent and when she was a minor incapable of consenting to such sexual conduct.
- 49. As a direct and proximate cause of Defendant Hageman's wrongful acts Plaintiff suffered and will continue to suffer in the future great pain of mind and body, shock, emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, anger, rage, frustration, loss of enjoyment of life, loss of consortium, loss of love and affection, sexual dysfunction, past and future medical expenses for psychological treatment, therapy, and counseling.
- 50. The allegations set forth in this Count constitute traditional negligence and negligence per se for violation of A.R.S. § 13-3623 and other relevant statutes and laws, including the common law, enacted for the protection of a specific

1 class of persons of which John C.V. Doe is a member.

2 **COUNT II**

3 **BREACH OF FIDUCIARY DUTY**

4 **(All Defendants)**

5 51. Plaintiff incorporates all other paragraphs.

6 52. Defendants' relationship with Plaintiff Jane J.P. Doe was one of spiritual  
7 guide, counselor, and shepherd. As a fiduciary to Plaintiff, Defendants owed  
8 a duty to investigate, obtain, and disclose sexual misconduct, sexual assault,  
9 sexual abuse, molestation, sexual propensities, and other inappropriate acts of  
10 its priests, including Defendant Brother Mark Schomack. As fiduciary,  
11 counselor and spiritual guide, Defendants owed Plaintiff a duty to work solely  
12 for his benefit.

13 53. Defendants breached their fiduciary duties owed to Plaintiff.

14 54. As a direct and proximate cause of Defendants' breach Plaintiff suffered and  
15 will continue to suffer in the future great pain of mind and body, shock,  
16 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation,  
17 anger, rage, frustration, loss of enjoyment of life, loss of consortium, loss of  
18 love and affection, sexual dysfunction, past and future medical expenses for  
19 psychological treatment, therapy, and counseling.

20 **COUNT III**

21 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

22 **(All Defendants)**

23 55. Plaintiff incorporates all other paragraphs.

24 56. Defendants' wrongful conduct, including sexual abuse, conspiracy to conceal  
25 sexual abuse, failure to report Schomack's sexual abuse of children,  
26 acquiescence, affirmance, and ratification of Schomack's sexual abuse  
27  
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1 exceeded the bounds of decency and were extreme and outrageous causing  
2 Plaintiff to suffer severe emotional and psychological distress.

3  
4 57. As a direct and proximate cause of Defendants' wrongful conduct Plaintiff  
5 suffered and will continue to suffer in the future great pain of mind and body,  
6 shock, emotional distress, embarrassment, loss of self-esteem, disgrace,  
7 humiliation, anger, rage, frustration, loss of enjoyment of life, loss of  
8 consortium, loss of love and affection, sexual dysfunction, past and future  
9 medical expenses for psychological treatment, therapy, and counseling.

10 **COUNT IV**

11 **INTENTIONAL / NEGLIGENT MISREPRESENTATION**

12 **(All Defendants)**

13 58. Plaintiff incorporates all other paragraphs.

14 59. Defendants have a duty to provide true, accurate, and or complete information  
15 to prevent a substantial and foreseeable risk of injury to young Catholic  
16 children, including Plaintiff.

17 60. Instead of reporting and disclosing the incidents of sexual abuse, Schomack's  
18 history of sexual abuse, or Schomack's propensity to sexually abuse young  
19 boys, Defendants breached their duties to Plaintiff by providing vague,  
20 incomplete, and inconsistent information regarding Schomack's ability to  
21 serve as a Roman Catholic priest.

22  
23 61. As a direct and proximate cause of Defendants' breach Plaintiff suffered and  
24 will continue to suffer in the future great pain of mind and body, shock,  
25 emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation,  
26 anger, rage, frustration, loss of enjoyment of life, loss of consortium, loss of  
27 love and affection, sexual dysfunction, past and future medical expenses for  
28 psychological treatment, therapy, and counseling.

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**COUNT V**  
**NEGLIGENT SUPERVISION / RETENTION**  
**(Defendants Gallup)**

62. Plaintiff incorporates all other paragraphs.

63. Defendant Gallup had a duty to hire, fire, train, retain, supervise, and or counsel employees or priests who had the knowledge, education, training, physical, psychological, and spiritual ability to serve as Roman Catholic Priests.

64. Defendants, individually and in concert with the others, breached their duties to Plaintiff.

65. As a direct and proximate cause of Defendants' breach Plaintiff suffered and will continue to suffer in the future great pain of mind and body, shock, emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, anger, rage, frustration, loss of enjoyment of life, loss of consortium, loss of love and affection, sexual dysfunction, past and future medical expenses for psychological treatment, therapy, and counseling.

**COUNT VI**  
**ENDANGERMENT**  
**(All Defendants)**

66. Plaintiff incorporates all other paragraphs.

67. Defendants have a duty to protect children from foreseeable and unjustifiable risks of harm.

68. Defendants knew or should have known Brother Schomack posed a significant risk of injury to Catholic children, including plaintiff.

69. Defendants, individually and or in agreement with each other, assigned Brother Mark Schomack to the missions, Catholic schools, and or parish on the Navajo Reservation and or throughout Northern Arizona.

70. Brother Schomack posed a substantial risk of significant physical and

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psychological injury to Catholic children, including Plaintiff.

71. Defendants, individually and in concert with the each other, recklessly endangered the health and well being of Catholic children, including Plaintiff by exposing them to Brother Schomack who was a substantial risk of significant physical and mental injury to young Catholic children including Plaintiff.

72. Defendants, individually and in concert with each other, recklessly endangered the health and well being of Catholic children, including Plaintiff, by employing and engaging in pattern and practice, customs and traditions, of ignoring, covering up, and or fraudulently concealing clergy sexual abuse.

73. As a direct and proximate cause of Defendants' reckless endangerment, Plaintiff suffered and will continue to suffer in the future great pain of mind and body, shock, emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, anger, rage, frustration, loss of enjoyment of life, loss of consortium, loss of love and affection, sexual dysfunction, past and future medical expenses for psychological treatment, therapy, and counseling.

**COUNT VII**  
**CHILD ABUSE**  
**(A.R.S. § 13-3623 and the common law)**  
**(All Defendants)**

74. Plaintiff incorporates all other paragraphs.

75. Brother Schomack had the care and custody of Jane J.P. Doe both because she was a parishioner under the control and authority of Brother Schomack, given to him by Defendants Gallup and the Franciscan Friars and because she attended religious education and training from Brother Schomack and other Catholic priests.

76. Defendants had the care and custody of Jane J.P. Doe both because they

1 assigned and/or permitted Brother Schomack to serve in the Navajo Nation  
2 and at missions, parishes, and or schools throughout Northern Arizona and  
3 because of their pattern, practice, custom, and tradition of training and  
4 educating children in the Catholic faith.

5  
6 77. Defendants had the care and custody of Jane J.P. Doe through traditional  
7 agency law.

8 78. Under circumstances likely to produce serious and significant physical and  
9 psychological injury and while Jane J.P. Doe was under the care and custody  
10 of all Defendants, Defendants and each of them caused, permitted, allowed,  
11 and/or established patterns, practices, customs, and traditions that placed Jane  
12 J.P. Doe in a situation in which his person, physical health, and  
13 mental/emotional health were endangered.

14 79. Defendants, and each of them, intentionally, recklessly and or negligently  
15 endangered and sexually abused Plaintiff.

16 80. As a direct and proximate cause of Defendants' sexual abuse of Plaintiff,  
17 Plaintiff suffered and will continue to suffer in the future great pain of mind  
18 and body, shock, emotional distress, embarrassment, loss of self-esteem,  
19 disgrace, humiliation, anger, rage, frustration, loss of enjoyment of life, loss  
20 of consortium, loss of love and affection, sexual dysfunction, past and future  
21 medical expenses for psychological treatment, therapy, and counseling.  
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23  
24 **COUNT VIII**  
25 **ASSAULT AND BATTERY**  
26 **(A.R.S. §§ 13-1204, 13-1203, and the common law)**

27 **(All Defendants)**

28 81. Plaintiff incorporates all other paragraphs.

82. At all times relevant to this complaint, Brother Schomack was over the age of  
18 and Jane J.P. Doe was under the age of 15.

- 1 83. Brother Schomack intentionally, knowingly and/or recklessly caused serious  
2 physical and mental/emotional injury to Plaintiff.  
3  
4 84. Brother Schomack intentionally, knowingly, recklessly and/or negligently  
5 placed Plaintiff in reasonable apprehension of imminent physical injury.  
6  
7 85. Brother Schomack intentionally, knowingly, recklessly and/or negligently  
8 touched Plaintiff with the intent to injure, insult or provoke.  
9  
10 86. The allegations set forth in this Count constitute negligence and negligence  
11 per se for violation of A.R.S. §§ 13-1204, 13-1203 and other relevant statutes  
12 and laws, including the common law, enacted for the protection of a specific  
13 class of persons of which Plaintiff is a member.  
14  
15 87. As a direct and proximate cause of Defendants' abuse of Plaintiff, Plaintiff  
16 suffered and will continue to suffer in the future great pain of mind and body,  
17 shock, emotional distress, embarrassment, loss of self-esteem, disgrace,  
18 humiliation, anger, rage, frustration, loss of enjoyment of life, loss of  
19 consortium, loss of love and affection, sexual dysfunction, past and future  
20 medical expenses for psychological treatment, therapy, and counseling.

21 **PRAYER FOR RELIEF**

- 22 88. Plaintiff requests judgment in favor of Plaintiff and against Defendants as  
23 follows to:  
24 a. For Plaintiff's general and special damages in an amount to  
25 be proven at trial by jury;  
26 b. For Plaintiff's incurred costs together with interest at the  
27 highest lawful rate on the total amount of all sums awarded  
28 from the date of judgment until paid;  
c. For the fair and reasonable monetary value of Plaintiff's past,  
present, and future pain and suffering in an amount to be  
proven at trial by jury;

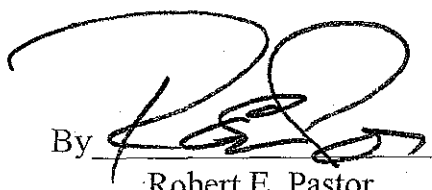


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- d. For the medical expenses incurred up to the date of trial and any additional expenses necessary for future medical care and treatment;
- e. For punitive damages or exemplary damages to be set by a jury in an amount sufficient to punish Defendants for their outrageous conduct and to make an example out of them so that others do not engage in similar conduct in the future;
- f. For such other and further relief as this Court may deem just and proper.

DATED this 28<sup>th</sup> day of May, 2013.

**MONTOYA, JIMENEZ & PASTOR, P.A.**

By   
Robert E. Pastor  
Attorneys for Plaintiff