

CAUSE NO. C-09-1504-C

JOHN DOE I, (A PSEUDONYM),	§	
	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
vs.	§	TOM GREEN COUNTY, TEXAS
	§	
ROMAN CATHOLIC DIOCESE OF SAN ANGELO; and BISHOP MICHAEL D. PFEIFER, OMI, HIS PREDECESSORS AND SUCCESSORS, AS BISHOP OF THE ROMAN CATHOLIC DIOCESE OF SAN ANGELO,	§	
	§	
	§	
Defendants.	§	340th JUDICIAL DISTRICT

**PLAINTIFF’S SECOND AMENDED ORIGINAL PETITION**

TO THE HONORABLE JAY WEATHERBY:

COMES NOW John Doe I, Plaintiff herein, and files this his *Second Amended Original Petition*, complaining of Defendants, Roman Catholic Diocese of San Angelo and Bishop Michael D. Pfeifer, OMI, His Predecessors and Successors, as Bishop of the Roman Catholic Diocese of San Angelo, and states the following:

**I**

**DISCOVERY CONTROL PLAN**

1.01 As required by TEX. R. CIV. P. 190.1, Plaintiff filed this lawsuit under a Level 3 Discovery Control Plan (Tex. R. Civ. P. 190.4).

**II**

**PARTIES**

2.01 Plaintiff John Doe I (hereinafter “Doe ” or “Doe I) is an adult male whose identity is known to Defendants. Doe was a minor and a resident of Coleman County, Texas at the time of all sexual abuse and sexual exploitation alleged herein. He was sexually abused as a child by

Father David Espitia, deceased, (hereinafter “Espitia” or “Father David”). Espitia was employed as a priest under the direction, control, supervision, and authority of the Roman Catholic Diocese of San Angelo (hereinafter “Diocese”) and its Bishop, Michael D. Pfeifer, OMI (hereinafter “Pfeifer”). Espitia was assigned by the Diocese to the following positions and posts during the events made the basis of this suit : St. Lawrence Church in St. Lawrence and St. Thomas Mission in Midkiff; St. Anthony Church and St. Joseph Church in Odessa and Mission of St. Martin de Porras; St. Ann Church in Colorado City, and Mission of St. Joseph in Loraine. Espitia was also appointed by Pfeifer to key positions in the Diocese, including Director of Vocations and Director of Seminarians from 1996 through 1999 and membership on the Priest Personnel Board from 2001 until his death. While Espitia worked at these various assignments, he sexually abused Doe on parish property from approximately 1994 to Spring 2003 when Plaintiff was approximately eight (8) to sixteen (16) years old.

2.02 Defendant Diocese educated and ordained Espitia. Pfeifer and the Diocese were his employer, or ostensible employer by granting him priestly faculties and assigning him to various parishes and positions within the diocese. Through the authority and mantle of the priesthood, Espitia groomed and preyed upon Doe. The Diocese has answered and appeared herein.

2.03 Defendant Pfeifer, in his official capacity as the Bishop of the Roman Catholic Diocese of San Angelo, His Predecessors and Successors, is a natural person and resident of Tom Green County, Texas. Pfeifer sponsored Espitia as a seminarian, educated and ordained him a priest in 1994 and then assigned and transferred him to various parishes within the Diocese. Pfeifer also appointed Espitia to important positions within the Diocese as identified in paragraph 2.01 above. Therefore, Espitia was a vice-principal of the Diocese. Pfeifer has answered and appeared herein.

2.04 Venue is proper in this case in Tom Green County, Texas because the headquarters of the Diocese of San Angelo is located in Tom Green County.

### III

#### SEXUAL ABUSE OF DOE

3.01. At all times material herein, Espitia was Roman Catholic Priest, retained and assigned by Pfeifer to various parishes within the Diocese as identified in paragraph 2.01 herein. Espitia remained under the retention, direct supervision, employ, agency and control of Defendant Diocese and its Bishop. Further, Espitia, due to the various key positions and offices he held in the Diocese was a vice-principal of that organization.

3.02. From approximately 1994 to Spring 2003, Espitia engaged in unlawful, offensive sexual contact including multiple acts of continual sexual assault against Doe when he was a child. Espitia used his position as a trusted member of the clergy, a pastor, mentor, counselor, and godfather to gain the trust and confidence of John Doe and to render him emotionally dependant on him. Espitia thus gained access to Plaintiff to groom him with expensive gifts, money, food and other items. As a further method to ingratiate himself with Doe, Espitia also told the child he was “special” and encouraged him to attend seminary and become a priest. The abuse, exploitation and sodomy of Plaintiff were thus an outgrowth of and engendered by Espitia’s role as priest, pastor and counselor. The abuse included sexual contact in the rectories of various churches, or apartments provided by the Diocese for Espitia’s use, as well as in the child’s home and in the priest’s vehicles.

3.03. Father David’s sexual abuse of Doe included fondling the boy’s genitals, skin to skin, and forcing the boy to touch his genitals. The priest also performed oral sex on the child. Espitia showed him homosexual pornography on the priest’s computer. He even made pornographic images of Doe using his computer’s webcam. Espitia took the boy with him to

various churches he was assigned to, allowed him to spend the night at the rectory and sleep in the priest's bed where he sexually abused him. Espitia also introduced him to seminarians who were also staying there. He had Doe I shower with him. Espitia often drove Doe around in his "SUV" and groomed him with gift cards, CDs, money, and even gave him a dog. He told Doe he "loved" him and not to tell anyone what he was doing to him. The abuse eventually escalated to anal rape when the boy was approximately ten or eleven years old. The abuse occurred regularly at least two times a month between 1994 and Spring 2003.

3.04 Towards the end of the school year in 2003, Doe told his school counselor about the sexual things Father David was doing to him. On June 6<sup>th</sup>, 2003 Espitia told Pfeifer about Doe's outcry. The following week, John Doe confronted his abuser, Father Espitia, on the telephone. A few hours later that same day, Doe received a call from Bishop Pfeifer asking Doe to confirm the sexual abuse which the boy did. The very next day, June 13, 2003, Espitia was found dead propped against his closet door, with a rope around his neck "strangled" in the rectory of St. Ann's. The Diocese did not report Doe's abuse to civil authorities prior to Espitia's death. Instead, the Bishop wrote an article for the Diocesan newspaper, "Diocese Loses a Beloved Priest," which lauded Espitia's "exemplary" record. The Diocese's actions and inactions following Espitia's death further compounded the harm to Doe. Meanwhile, the Colorado City police investigation into Espitia's death found hundreds of images of depraved homosexual pornography on the priest's computer as well as pornographic videos.

3.05. Defendant Espitia was a priest working in several parishes within the San Angelo area, all of which were operated by the Roman Catholic Diocese of San Angelo. At that time and presently, the parishes where the abuse occurred were owned, operated, and controlled by the Roman Catholic Diocese of San Angelo. During this time, Defendant Diocese knew or should

have known that Espitia was engaging in sexual misconduct which was both actually and potentially damaging to children.

3.06 At all times material herein, Father David Espitia was a Roman Catholic priest ordained and assigned by Defendant Diocese to parishes located in the San Angelo Diocese. The Diocese provided Espitia support and other benefits . He worked as a Diocesan vice-principal in the positions of pastor, Director of Vocations, Director of Seminarians and member of the Priest personnel board. while sexually abusing and exploiting Plaintiff. Espitia, using the imprimatur of priesthood to groom and abuse Plaintiff, remained under the retention, direct supervision, agency and control of Defendant Diocese and Defendant Pfeifer.

#### IV

#### **CAUSES OF ACTION AGAINST DEFENDANTS SAN ANGELO DIOCESE AND ITS FORMER BISHOPS AND CURRENT BISHOP, PFEIFER**

4.01 Each of Plaintiff's causes of action for personal injury is based on injuries arising as a result of sexually abusive and assaultive conduct that violates one or more of Sections 22.011 and 22.021 of the Texas Penal Code.

4.02 At all times material herein, Father Espitia was employed as a Roman Catholic priest by Defendant San Angelo Diocese and was under its direct supervision and control when he engaged in sexual contact with the then-minor Plaintiff, Doe. As a Catholic priest, Father Espitia further acted upon delegated authority of the San Angelo Diocese as vice principal, agent, servant, apparent agent or ostensible agent for the Bishop of the Diocese. The Bishop was responsible for the assignment, retention and discipline of its priests, including Espitia. He rose in the ranks of the Diocese as a vice-principal of the corporate church. Espitia's own knowledge of his sexual perversions is thus imputed to the Diocese.. Espitia used the trust of the position of a priest to gain heightened and unquestioned access to Plaintiff in order to groom and abuse him.

Father Espitia engaged in this wrongful conduct while in the course and scope of his

employment with the Defendant Diocese. Consequently, Defendant Diocese is liable for the wrongful conduct of Father Espitia. Plaintiff, therefore, pleads vicarious liability under the doctrine of *respondeat superior*, agency, apparent agency and agency by estoppel. Doe pleads that Defendant Diocese and its Bishop knew or should have known of the sexual misconduct and continuing dangerous propensities of Espitia. His injurious sexual misconduct was preventable and foreseeable.

4.03 Espitia, as the Director of Vocations and Seminarians, and pastor of his various parishes, performed non-delegable duties and had the authority to employ, direct and discharge as well as manage other individuals on behalf of Defendant Diocese. Plaintiff thus pleads that Defendant Diocese is liable for the conduct of Espitia as a vice-principal.

4.04 Defendants Diocese and Bishop negligently assigned, retained and/or continued the employment of Father Espitia in a position of trust, confidence and authority as a priest in direct contact with children when it knew or should have known of his dangerous sexual propensities against minors.

4.05 Defendants Diocese and Bishop failed to warn Plaintiff or his family of Espitia's dangerous propensities towards altar boys.

4.06 Defendants Diocese and Bishop failed to provide reasonable supervision of Espitia.

4.07 Plaintiff alleges that Espitia, while a Catholic priest, had a psychological disorder characterized by an abnormal, impulsive sexual attraction to boys. Plaintiff further alleges that Defendants knew or should have known of Espitia's perverse proclivities and illegal behavior prior to the abuses complained of herein. These Defendants also knew or should have known that Espitia's disorder rendered him unfit for a position of trust and confidence as priest in all the San Angelo Diocese parishes to which he was assigned in that it would allow him

unsupervised access to youngsters such as Doe. Therefore, Plaintiff relies on Espitia's mental condition as part of their claims. *See Texas Rules of Evidence* 509(e) (4) and 510(d) (5).

4.08 Plaintiff was raised in the Roman Catholic faith. He was an altar boy in the Coleman church and was confirmed in that parish. Plaintiff had been taught to hold its clergy and hierarchy in great trust, confidence, reverence and respect and to obey and to rely, without question, upon the secular counseling and spiritual guidance of their priests, bishops and superiors. Father Espitia was his counselor, mentor and godfather.

4.09 As Catholics, Plaintiff and his family trusted that the church, its official representatives, priests and bishops would always be and behave as they represented, namely as chaste, honorable and moral men acting in parishioners' best interests and as embodiments of Christ on Earth who would never knowingly expose any of them, certainly not children, to any danger, especially sexual injury, and particularly from one of their own clergy. Plaintiff trusted and expected with the highest degree of confidence, good faith and loyalty that all Defendants would act prudently on his behalf. He depended on the Diocese and its Bishop to provide them with priests who were honest, of good moral character, sexually safe and otherwise suitable for service among them.

4.10 Defendant Diocese, as a purported eleemosynary, is granted special privileges and immunities by society and is in a fiduciary relationship or special relationship with Plaintiff. Defendant Diocese owed Plaintiff the highest duty of trust and confidence and was required to act in Plaintiffs' best interest. Defendant Diocese knowingly violated that relationship. Defendant Diocese knowingly breached Plaintiff's trust when it failed to act with the highest degree of trust and confidence to protect Plaintiff from this sexually-predatory priest. This knowing breach of fiduciary duty proximately caused injury to Plaintiff. Defendant Bishop also

knowingly participated in the breach of fiduciary duty committed by Defendant Diocese as to the Plaintiff, and such knowing conduct proximately caused the injuries to Doe.

4.11 Defendants were was under a duty to disclose the extent of the problem of sexual abuse of children by Roman Catholic clergy and the severe psychological problems that would result from such abuse if not properly treated. Instead, Defendants Diocese and Bishop fraudulently concealed this information, thereby allowing Espitia access to Doe and likely other children for his own perverse sexual gratification.

4.12 Defendants Diocese and its Bishop also committed fraud that proximately caused Plaintiff's damages when they failed to disclose Espitia's abusive tendencies, and misrepresented Espitia as a celibate priest in good standing to his parishioners and the public, including Plaintiff. This fraud continued even after this lawsuit was filed when Pfeifer issued a press release lauding the good works of Espitia and condemning the acts of his victim in asserting his legal rights.

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

4.14 Plaintiff alleges that the actions of Defendants have inflicted emotional distress upon Plaintiff.

4.15 Plaintiff asserts that Defendants are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 302B, under the legal doctrine of negligent assumption of risk of intentional or criminal conduct which states:

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



Restatement (Second) of Torts, Section 302B.

4.16 Defendants Diocese and Bishop realized or should have realized that Espitia posed an unreasonable risk of harm to minor children, including Plaintiff John Doe.

4.17 Plaintiff asserts that Defendants Diocese and Bishop are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 311, under the legal doctrine of negligent misrepresentation involving risk of physical harm:

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

Restatement (Second) of Torts, Section 311.

4.18 Defendants Diocese and Bishop's failure to investigate and apprise Plaintiff of Espitia's predatory nature and the Diocese's representation that Espitia was not sexually dangerous placed Doe in peril.

4.19 Plaintiff asserts that Defendants are liable for acts and/or omissions pursuant to the Restatement (Second) of Torts, Section 876, under the legal doctrine of concert of action, as joint venturers, as agents of these entities, and as shareholders of this entity, under which theories Plaintiff seeks damages from all Defendants jointly and severally.

4.20 Defendants Diocese and Bishop negligently failed to implement reasonable policies and procedures to detect and prevent sexual misconduct by Father Espitia even though Defendants knew or should have known Espitia was a predictable risk for such sexual abuse and

sexual misconduct. The negligent and reckless acts relevant to out of Defendants' policies and practices, include, but are not limited to:

1. supervising, assigning, and retaining Espitia;
2. promoting Espitia to a vice-principal of the church corporation and other positions of authority;
3. retaining, transferring and promoting Espitia as a priest following reports by parishioners of his improper conduct towards altar boys, excessive consumption of alcohol, threatening behavior toward women and girls and other inappropriate behavior which should have warranted investigation by the Diocese and/or at the least his referral to mental health professionals for treatment and counseling ;
4. Failing to investigate and report Espitia's questionable and inappropriate behavior as described above;
5. failing to report the criminal sexual abuse of Plaintiff to civil authorities until after Espitia's death;
6. failing to inform the public that Espitia and priests like him assigned to their parishes were sexual threats to minors;
7. ignoring warnings from medical professionals even within the Catholic Church that certain priests were potentially dangerous to children;
8. misrepresenting facts to victims who requested information about such priests who abused them in order to fraudulently conceal their own negligence;
9. ignoring warnings from others within the dioceses' and bishops' conferences who believed that such priests were threats to children;
10. failing to report the crimes committed by such priests to law enforcement and obstructing or interfering with law enforcement investigations concerning abusive priests, including spiriting them out of the state of Texas, not just to other dioceses or parishes, but to other countries beyond the reach of law enforcement;
11. failing to alert parishioners, previous parishes and the surrounding communities where abusive priests had served that they were exposed to known or suspected child molesters;
12. making decisions which reflected that the reputations of abusive priests and the desire to avoid scandal were vastly superior and more important to the Diocese than the welfare of victims who had been abused by priests ; and

13. fostering an environment and culture where abuse of children by clerics could flourish and in which it was clearly understood that there was no accountability for such criminal acts toward children.

4.21 The conduct of Defendants Diocese its Bishop was in violation of state and federal criminal statutes regarding sexual abuse of children and vulnerable persons, which constitutes negligence per se, including but not limited to Texas Penal Code §21.11, §22.011, §22.021, §22.04 and Texas Penal Code §43.25.

4.22 Plaintiff alleges fraud against Defendants and others at this time unknown to Plaintiff in that (1) Defendants made material representations; (2) the representations of each were false; (3) Defendants knew their statements were false when they made them or recklessly made the statements as a positive assertion without knowledge of the truth; (4) Defendants intended that the Plaintiff relies on their misrepresentations; (5) Plaintiff relied on the misrepresentations; and (6) the Plaintiff suffered injuries in consequence.

4.23 Plaintiff claims that Espitia and Defendants Diocese and Bishop took actions designed to fraudulently conceal their breach of duty, which give rise to Plaintiff's claims against Defendants. Plaintiff alleges that (1) Defendants had actual knowledge of the facts concealed and (2) each Defendant had a fixed purpose to conceal the wrong. Plaintiff thus alleges facts sufficient to establish fraudulent concealment in that Plaintiff has established (1) the existence of the underlying tort; (2) each Defendant's knowledge of the tort; (3) Defendants' use of deception to conceal the tort and (4) Plaintiff's reasonable reliance on Defendants' deception.

4.24 At time of trial, Plaintiff will prove that he was an invitee to the premises at issue, including the rectories/apartments of certain parishes within the Diocese, which were leased or purchased in part and/or maintained by Defendants Diocese and Bishop. Defendants owed a duty of care to those who may be harmed by criminal acts on its premises when the risk of criminal conduct is so great that it is both unreasonable and foreseeable. Defendants were aware

or should have been aware of criminal acts of assault by Father Espitia on Plaintiff on the properties and at other locations and breached their duty of care to Plaintiff.

4.25 The acts or omissions of Defendants pled in Paragraphs 4.01-4.24 herein proximately caused injuries to Plaintiff.

V

**CLAIMS OF CONSPIRACY: PATTERN AND PRACTICE  
OF COVER-UP OF CLERGY SEXUAL ABUSE OF CHILDREN**

5.01 Dioceses throughout the United States, including the San Angelo Diocese, have handled cases of criminal sexual abuse of minors by Catholic clergy in such a uniform fashion as to demonstrate a common pattern and practice for concealing these crimes from the public, including the affected parishes and even victims identified within them, for failing to report them to proper civil authorities, and/or for spiring clerics out of dioceses and even the state to church-run treatment facilities and/or out of the United States in order to evade probable criminal prosecution of priest-perpetrators and the possible filing of civil claims against them by their victims.

5.02 This well established pattern, practice, scheme and protocol of recycling abusive priests by the Roman Catholic hierarchy was finally publicly acknowledged and exposed in February 2004 in a research study conducted by the John Jay School of Criminal Justice. The study, titled *A Report on the Crisis in the Catholic Church in the United States*, concluded in part that:

Too many bishops in the United States failed to respond to this problem forthrightly and firmly. Their responses were characterized by moral laxity, excessive leniency, **insensitivity, secrecy, and neglect**. Aspects of the failure to respond properly to sexual abuse of minors by priests included: (i) inadequately dealing with victims of clergy sexual abuse, both pastorally and legally; (ii) **allowing offending priests to remain in positions of risk; (iii) transferring offending priest to new parishes or other dioceses without informing others of their histories; (iv) failing to report instances of criminal conduct by**

**priests to secular law enforcement authorities, whether such a report was required by law or not;** and (v) declining to take steps to laicize priests who clearly had violated the law [*emphasis ours*].<sup>1</sup>

5.03 This common plan and scheme, which was in existence well before the abuse of Plaintiff, was followed by the Bishops of the San Angelo Diocese and other heirarchical agents to conceal the crimes against children by priests of the Diocese of San Angelo including seminarian Augusti Herres, Father Miguel Esquivel, Father Domingo Gonzalez Estrada, Father David Holley and other individuals and entities currently unknown to the Plaintiff.

5.04 Most disturbingly, and in keeping with the pattern and practice described above, Espitia, like others of his ilk, was allowed to serve in various parishes as a priest in good standing following reports of his misconduct.

5.05 Defendants San Angelo Diocese and its Bishops were aware or should have been aware of the sexual abuse of Plaintiff and abuses against altar boys within its territory and of the wrongful conduct of Espitia as well as the other San Angelo clerics named above. Defendant Bishop knew or should have known of sexual misconduct by Father Espitia prior to and during the abuse of Plaintiff. Instead of investigating Espitia's misconduct, the Defendants entered into an agreement with Espitia and others in keeping with their pattern and practice to conceal this abuse and keep it secret at the expense of victims. Defendants intended to accomplish the unlawful purpose of concealing from state officials crimes against children by Father Espitia and other priests of Defendant Diocese and/or intended to conceal their breach of duty by the unlawful means of failing to report Father Espitia and other known or suspected perpetrators as required by law. Further, these Defendants intended to cause additional injury to Plaintiff as a consequence of failing to report unlawful abuse as required by law. This combination had the

---

<sup>1</sup> See John Jay Report at page 92, which can be found on the United States Catholic Conference of Bishops' website, [www.usccb.org/ocyp/webstudy.shtml](http://www.usccb.org/ocyp/webstudy.shtml).

result of concealing crimes by fraudulent and illegal means and concealing the facts giving rise to claims for civil damages by the Plaintiff against Defendants by fraudulent and illegal means.

5.06 The acts or omissions of Defendants pled in Paragraphs 5.01-5.05 herein proximately caused injuries to Plaintiff.

## VI

**THE DIOCESE OF SAN ANGELO AND ITS BISHOPS WERE CRIMINALLY  
COMPLICIT WITHIN THE MEANING OF TEX. CIV. PRAC. & REM. CODE ANN.  
§41.005(2), THEREFORE, PUNITIVE DAMAGES APPLY**

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

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

6.02 Tex. Pen. Code Ann. §7.02(a)(2). The provisions of this statute are met because Defendants assisted and aided Espitia in the commission of the sexual assaults on Plaintiff and likely other minor boys in Texas by affording him access to Doe and failing to report Espitia to Child Protective Services until after the priest's death.

6.03 Further, provisions of Tex. Pen. Code Ann. §7.02(a)(3) are met because Defendants had a duty to prevent the sexual abuse, assault and exploitation of Plaintiff. Defendants knew of Espitia's pattern and history of his misconduct with altar boys and despite

that knowledge, never investigated him and repeatedly placed him in environments where he could prey upon young boys like Plaintiff.

6.04 Additionally, Tex. Pen Code Ann. §7.21-7.23 encompasses the criminal responsibility of corporations or associations and provides that a corporation or association is criminally responsible for the conduct of its agent if it was authorized, performed or recklessly tolerated by a high managerial agent. The Bishop of San Angelo not only tolerated it, he aided and abetted Espitia in acquiring more victims by transferring and promoting him. Plaintiff would show that Defendants recklessly tolerated and allowed the conduct of Espitia and are therefore, subject to punitive damages in this matter.

## VII

### **SEXUAL EXPLOITATION BY A MENTAL HEALTH SERVICES PROVIDER**

7.01 Since Espitia violated the provisions of Tex. Civ. Prac. & Rem. Code § 81.000 *et seq.*, all Defendants are parties respondent to this cause of action. *See* § 81.003, *Liability of Employer*. Defendant Diocese and its Bishop knew or should have known of the occurrences of sexual exploitation by Espitia because of his reported misconduct involving excessive alcohol use, negative attitude and conduct toward women and girls, verbal harassment, lying to and threats against parishioners, and improper conduct with altar boys. Shortly before his death, Defendant Diocese and its Bishop received reports of sexual exploitation of John Doe I by Espitia. They failed to report and/or investigate this behavior, relying on others to report this to authorities, until after Espitia's death, causing proximate and actual damages to Plaintiff. Further, Defendant Diocese and its Bishop knew or should have known of Espitia's propensity to engage in sexual exploitation because of the various reports from parishioners and others they received during Espitia's service as a Catholic priest. *See* Tex. Civ. Prac. & Rem. Code § 81.003(e).

7.02 Using his position as a priest and counselor, Espitia repeatedly, sexually abused and sexually exploited Doe. The Plaintiff was a vulnerable youth and minor who sought counseling from Espitia because of his position as a member of the clergy educated, trained and empowered to counsel youngsters. While in this counseling relationship, Espitia exploited his position as trusted priest/counselor to gain the emotional dependence of Plaintiff so he could sexually abuse him.

7.03 Espitia knew of his own dangerous sexual propensities toward young boys.

7.04 Espitia sexually molested and sexually exploited Plaintiff on numerous occasions during this counseling relationship with Doe .

7.05 Espitia made inappropriate and unwanted sexual contact with Plaintiff and thereby exploited him when he knew or should have reasonably believed that such contact would be offensive and psychologically damaging to him.

7.06 Espitia made implied threats, and explicit instructions and statements to Doe not to tell anyone about the abuse in order to silence him and make him emotionally dependant on him, and instill reverential fear in his victim to protect himself and the Diocese.

7.07 Espitia's sexual abuse and exploitation resulted in the infliction of emotional injury on Plaintiff.

7.08 Espitia violated §§ 22.11, 22.011, 22.021, 22.04 and 43.25 of the Texas Penal Code when he engaged in the above described sexual misconduct with the Plaintiff.

7.09 Espitia maintained himself in a position of trust, confidence and authority as a priest and counselor and used this trust, confidence and authority to sexually exploit Doe.

7.10 Espitia knowingly breached this fiduciary (special and confidential) relationship when he sexually exploited Doe, which proximately caused damages to him.



7.11 As a clergyman educated and trained as a counselor, Espitia rendered Doe emotionally dependent upon him in order to sexually abuse and exploit him within the context of that counseling relationship. Doe alleges that under the provisions of Tex. Civ. Prac. & Rem. Code § 81.003(d), Defendants Pfeifer and the Diocese may be held responsible as Espitia's employer pursuant to §81.003(e).

7.12 Doe seeks attorney's fees pursuant to Tex. Civ. Prac. & Rem. Code § 81.004.

## **VIII**

### **STATEMENTS TO THE COURT**

8.01 Plaintiff asserts that the statutes of limitations has not run on these causes of action pursuant to the Texas Civil Practice and Remedies Code § 16.0045 and § 81.009.

8.02 Plaintiff pleads the Discovery Rule, thus tolling the statute of limitations.

8.03 Plaintiff John Doe I pleads unsound mind pursuant to Texas Civil Practice and Remedies Code §16.001, thus tolling limitations in this case.

8.04 Plaintiff pleads the effects of the sexual abuse by Father Espitia rendered him emotionally dependent as described in § 81.009(b) of the Texas Civil Practice and Remedies Code.

8.05 Additionally, Espitia's implied threats, instructions or statements as described in paragraphs 3.02 and 3.03 above placed Doe under further psychological duress and emotional dependence, thus additionally delaying the filing of this lawsuit despite his due diligence.

8.06 Plaintiff pleads fraud and fraudulent concealment of this fraud on the part of Defendants, thus suspending the running of limitations as to all claims.

8.07 Plaintiff pleads fraudulent concealment of fraudulent statements and other fraudulent misrepresentations known to Defendants concealing Plaintiff's claims, thus suspending the running of limitations.

8.08 Plaintiff pleads breach of fiduciary duty and the duty to disclose, including the use of deception to conceal the breach of duty of due care against Defendants, thus suspending the running of limitations against Defendants.

8.09 Plaintiff pleads that he was unable to discover this fraud, fraudulent concealment and breach of fiduciary duty, or the civil conspiracy despite reasonable diligence on his part until within two (2) years of the filing of this case.

8.10 Plaintiff pleads a civil conspiracy to conceal criminal acts, to conceal the commission of criminal acts, to conceal negligence by unlawful means, to conceal fraud, to conceal the breach of the duty of trust and confidence, and to conceal by illegal means the use of deception to avoid claims until limitations would expire, thus suspending the running of limitations against all Defendants as to all claims.

8.11 Plaintiff alleges that the actions of Defendants, because of their conduct, statements and promises, preclude them under the doctrine of estoppel, quasi-estoppels and equitable estoppel from claiming the bar of limitations to any of Plaintiff's claims.

8.12 Plaintiff allege that the Diocese has altered, destroyed, removed or spoiled evidence that one may reasonably have inferred would be unfavorable to Defendants. Such acts by Defendants have resulted in prejudice to Plaintiff, causing him injury. Thus, at a minimum, Plaintiff is entitled to submit a spoliation presumption instruction to the jury.

8.13 Plaintiff alleges that these Defendants have acted in concert and in accordance with their pattern and practice to fraudulently conceal their predatory priests by recycling them, concealing the extent and nature of their sexual abuse and trivializing the harmful effects of such abuse on their victims.

**IX**  
**DAMAGES**

9.01 As a result of the conduct and incidents described herein, Plaintiff has incurred medical and counseling expenses in the past which were reasonable and necessary and in all reasonable probability such expenses will continue in the future.

9.02 As a result of the conduct, incidents and injuries described herein, Plaintiff has experienced severe emotional and psychological pain and suffering in the past and in all reasonable probability will sustain severe psychological and emotional pain and suffering in the future.

9.03 As a result of the conduct and incidents described herein, Plaintiff has suffered mental anguish in the past and, in all reasonable probability, will sustain mental anguish in the future.

9.04 As a result of the conduct and incidents described herein, Plaintiff has suffered many other damages, including loss of self-esteem, loss of trust, depression, abuse of substances suicidal tendencies and thoughts and loss of faith. In all reasonable probability, his social and professional adjustment in the past has been affected and in all probability his future social and professional life will be adversely impacted as well.

9.05 John Doe has suffered lost wages in the past and will suffer a diminished wage-earning capacity for the future.

9.06 As a result of the above, Plaintiff seeks compensatory damages in excess of the jurisdictional limits of the Court.

## X

### **GROSS NEGLIGENCE AND PUNITIVE DAMAGES**

10.01 Plaintiff also seeks punitive and exemplary damages in order to punish and deter the outrageous conduct of Defendants herein. Facts as alleged above will be proven by Plaintiff's clear and convincing evidence that Defendants acted fraudulently and maliciously and were grossly negligent in that, either by act or omission, they exposed Plaintiff to an extreme degree of risk of harm, considering the probability, magnitude and extent of the harm that would likely impact him and which ultimately did. Further, Defendants had real, subjective awareness of the risks involved, but nevertheless proceeded with callous indifference to the rights, safety, and welfare of Plaintiff, physically, psychologically and spiritually. These damages, in concert with the conduct of Father Espitia, are described as felonies where applicable, specifically Tex. Pen. Code §21.11 (indecent with a child), §22.011 (sexual assault), §22.021 (aggravated sexual assault), §22.04 (injury to a child) and §43.25 (sexual performance by a child). They were committed knowingly, in consequence of which the punitive damage cap does not apply. *See* Tex. Civ. Prac. & Rem. Code §41.008(c).

10.02 To the extent that this case arises out of criminal conduct committed by Father Espitia, an unfit employee or agent of Defendants, Defendants are liable for exemplary damages because the agent was notably unfit; Defendants acted with malice in retaining him and in failing to supervise him; the employee or agent was employed in a managerial capacity and was acting in the scope of employment; and/or Defendants effectively ratified or approved his acts.

## XI

### **CLAIM FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST**

11.01 Plaintiff claims interest in accordance with §304.104, *et seq*, Texas Finance Code and any other applicable law.

**XII**

**JURY DEMAND**

12.01 Plaintiff requests a jury of his peers to hear the evidence in this case and render a just verdict in his favor.

**XIII**

**PRAYER**

14.01 FOR THE REASONS STATED ABOVE, Plaintiff prays that upon final hearing of this cause, Plaintiff has judgment against Defendants, jointly and severally, for all damages described herein, including actual damages, punitive damages, costs of suit, interest allowable by law and for such other relief to which Plaintiff may be justly entitled.

RESPECTFULLY SUBMITTED:

TAHIRA KHAN MERRITT, P.L.L.C.

---

Tahira Khan Merritt  
State Bar No. 11375550  
8499 Greenville Ave., Suite 206  
Dallas, Texas 75231-2424  
(214) 503-7300  
(214) 503-7301 Facsimile

TOM RHODES LAW FIRM, P.C.  
J. Thomas Rhodes, III  
State Bar No. 16820050  
Laura Pazin-Porter  
State Bar No. 24032941  
126 Villita  
San Antonio, Texas 78205  
(210) 225-5251  
(210) 225-6545 Facsimile

**ATTORNEYS FOR PLAINTIFF JOHN DOE I**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of Plaintiff's Second Amended Original Petition has been properly forwarded, on this 16<sup>th</sup> day of November, 2010, to the following counsel of record:

Donald W. Griffis  
JACKSON WALKER, LLP  
301 West Beauregard Avenue  
Suite 200  
San Angelo, Texas 76903  
Counsel for Defendants

- CERTIFIED MAIL RRR
- HAND DELIVERY
- FACSIMILE
- REGULAR MAIL
- ELECTRONIC MEANS



---

Tahira Khan Merritt