

LAW OFFICE OF MARK GALLAGHER

MARK F. GALLAGHER 6016-0
776 Kailua Road, Suite 201
Kailua, Hawai'i 96734
Telephone: 535-1500

Attorney for Plaintiffs

FIRST CIRCUIT COURT
STATE OF HAWAII
FILED

2012 NOV -7 AM 9:41

H. CHING
CLERK

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN ROE NO. 3 AND JOHN ROE NO.
4,

Plaintiffs,

vs.

CONGREGATION OF CHRISTIAN
BROTHERS OF HAWAII, INC, t/a
DAMIEN MEMORIAL SCHOOL;
ROMAN CATHOLIC CHURCH IN THE
STATE OF HAWAII;
BROTHER ROBERT N. BROUILLETTE;
JOHN DOES 1-10; JANE DOES 1-10;
DOE CORPORATIONS 1-10; DOE
PARTNERSHIPS 1-10; DOE NON-
PROFIT ENTITIES 1-10; and DOE
GOVERNMENTAL ENTITIES 1-10,

Defendants.

CIVIL NO. **12-1-2771-11** KYN
(Non-Motor Vehicle Tort)

COMPLAINT; SUMMONS; DEMAND FOR
JURY TRIAL

COMPLAINT

Plaintiffs John Roe 3 and John Roe 4, fictitious names used to protect Plaintiffs' privacy interest, allege the following against Defendants THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC, a Hawaii not for profit corporation t/a DAMIEN MEMORIAL SCHOOL, ROMAN CATHOLIC CHURCH IN THE STATE OF

I do hereby certify that this is a full, true and
correct copy of the original on file in this office.

HAWAII, a Hawaii not for profit corporation, and Br. Robert Brouillette:

PARTIES

- a. Plaintiff John Roe 3 (hereinafter referred to as "Plaintiff") is an adult male who resides in the County of Honolulu, State of Hawaii. Plaintiff was a minor at the time of the sexual abuse alleged herein.
- b. Plaintiff John Roe 4 (hereinafter referred to as "Plaintiff") is an adult male who resides in the County of Honolulu, State of Hawaii. Plaintiff was a minor at the time of the sexual abuse alleged herein.
- c. At all times material to the Complaint, Defendant The Congregation of Christian Brothers of Hawaii, Inc., a Hawaii not for profit corporation trading as and doing business as Damien Memorial School (hereinafter referred to as "Damien") was an all-boys, Catholic, college preparatory institution based on the tradition of the Irish Christian Brothers and their corporate entity, The Congregation of Christian Brothers of Hawaii, Inc., with its principle place of business at 1401 Houghtailing Street, Honolulu, Hawaii 96817.
- d. At all times material to the Complaint, Defendant The Roman Catholic Church in The State of Hawaii ("Diocese") was and

continues to be a diocese of the Roman Catholic Church and not for profit religious corporation, authorized to conduct business and conducting business in the State of Hawaii with its principal place of business at 1184 Bishop Street, City and County of Honolulu, State of Hawaii.

- e. At all times material, Defendant Brother Robert N. Brouillette (hereinafter referred to as "Brouillette"), was a Roman Catholic Brother, a member of, educated by, and under the direct supervision, authority, employ, and control of the other Defendants.
- f. Plaintiffs have attempted to ascertain the names and identities of possible defendants who are presently unknown to Plaintiffs. Plaintiffs' efforts include reviewing records and interviewing witnesses including other potential victims.
- g. Plaintiffs allege, upon information and belief, that the conduct of other defendants, presently unknown to Plaintiffs, was or may have been a proximate or legal cause of the harm that he has suffered as alleged herein.
- h. Plaintiffs have satisfied the requirements of Hawaii Revised Statutes, Section 657, specifically Act 68 enacted in 2012.

FACTS

1. Plaintiff John Roe 3 was born, raised, and resided at all relevant times in the County of Honolulu, State of Hawaii, and entered Damien as a freshman in approximately 1985. As a result of his upbringing, Plaintiff developed great admiration, trust, reverence, and respect for, and obedience to persons in authority and religious stature, including Brouillette.

2. Plaintiff John Roe 4 was born, raised, and resided at all relevant times in the County of Honolulu, State of Hawaii, and entered Damien as a freshman in approximately 1983. As a result of his upbringing, Plaintiff developed great admiration, trust, reverence, and respect for, and obedience to persons in authority and religious stature, including Brouillette.

3. At all times material, Brouillette was a Catholic brother, educated, trained, ordained, and employed by each and all of the Defendants and under the direct supervision, employ, agency, and control of each and all of the Defendants.

4. Plaintiffs allege, upon information and belief, Brouillette began working as a school-community brother/teacher at Damien during various time periods during the 1970s, 1980s and 1990s including, but not limited to some of the time periods when Plaintiffs attended Damien.

5. Damien exists within the borders and jurisdiction of Defendant Diocese for its benefit and under its control.

6. Generally, Brouillette's employment duties with the Defendants included teaching and working with children. Brouillette was a teacher and provided guidance for the spiritual and emotional needs of children, including Plaintiffs, entrusted to his care.

7. At all times material, Plaintiffs were students and/or former students at Damien where they came to know, admire, trust, revere, and respect Brouillette as a person of great influence and persuasion as an authority figure, brother, teacher, spiritual advisor, and counselor.

8. As students at Damien, each and all of the Defendants were responsible for the minors' care and well-being. Each and all of the Defendants owed a duty of care to Plaintiffs. Each and all of the Defendants had responsibility or control over the activities in which Plaintiffs and Brouillette were engaged.

FACTUAL ALLEGATIONS SPECIFIC TO JOHN DOE 3

9. In approximately 1986, when Plaintiff John Doe 3 was approximately thirteen years old, Brouillette served as Plaintiff's teacher, spiritual director and/or counselor at Damien.

10. In approximately 1986, when Plaintiff John Doe 3 was approximately thirteen years old, Brouillette, using his

Roe /Complaint

position of authority, trust, reverence, and control as a Roman Catholic brother and teacher, engaged in unpermitted, harmful and offensive sexual contact upon the person of Plaintiff. The sexual contact and/or acts constituted or would have constituted a criminal offense under part V or VI of chapter 707 (Haw. Rev. Stat. Sections 707-730 (2011)).

11.The sexual abuse and exploitation occurred on numerous occasions and was an extended and ongoing pattern of conduct by Brouillette and Defendants for multiple years. At all times relevant, Plaintiff was entrusted to Defendants' care, custody, and control and while Brouillette was under the direct supervision, employ, and control of Defendants.

12.Brouillette's practice of sexually accessing children and abuse was known or should have been known to Defendants. The abuse and grooming of Plaintiff John Doe 3 included, but is not limited to isolating Plaintiff, providing Plaintiff with rides home from Damien, showing Plaintiff pornography, forcing Plaintiff to participate in various sexual acts including performing oral sex on Plaintiff, forcing Plaintiff to perform oral sex on Brouillette, masturbation of Plaintiff, forcing Plaintiff to perform masturbation of Brouillette, anal penetration of Plaintiff and forcing Plaintiff to wear female clothing. These acts occurred in multiple locations

including, but not limited to on campus at Damien, inside the residence at Damien, and in a car driven by Brouillette.

FACTUAL ALLEGATIONS SPECIFIC TO JOHN DOE 4

13. In approximately 1984, when Plaintiff John Doe 4 was approximately thirteen years old, Brouillette served as Plaintiff's teacher, spiritual director and/or counselor at Damien.

14. In approximately 1984, when Plaintiff John Doe 3 was approximately thirteen years old, Brouillette, using his position of authority, trust, reverence, and control as a Roman Catholic brother and teacher, engaged in unpermitted, harmful and offensive sexual contact upon the person of Plaintiff. The sexual contact and/or acts constituted or would have constituted a criminal offense under part V or VI of chapter 707 (Haw. Rev. Stat. Sections 707-730 (2011)).

15. The sexual abuse and exploitation occurred on numerous occasions and was an extended and ongoing pattern of conduct by Brouillette and Defendants for multiple years. At all times relevant, Plaintiff was entrusted to Defendants' care, custody, and control and while Brouillette was under the direct supervision, employ, and control of Defendants.

16. Brouillette's practice of sexually accessing children and abuse was known or should have been known to Defendants. The abuse and grooming of Plaintiff John Doe 4 included, but is

not limited to isolating Plaintiff on trips and by providing Plaintiff with rides home from Damien, showing Plaintiff pornography, forcing Plaintiff to participate in various sexual acts including performing oral sex on Plaintiff, masturbation of Plaintiff, and forcing Plaintiff to perform masturbation of Brouillette. These acts occurred in multiple locations including, but not limited to on campus at Damien, inside the residence at Damien, in a car driven by Brouillette and in a hotel on Kauai.

FACTUAL ALLEGATIONS AS TO BOTH PLAINTIFFS

17. Before Brouillette sexually abused Plaintiffs, several reports were made to the Defendants about Brouillette's inappropriate sexual conduct towards minors. Before Plaintiffs were sexually abused, Defendants knew or should have known about Brouillette's interactions with children, Brouillette's sexuality, and Brouillette's abuses

18. As a result of the complaints and concerns regarding Brouillette's inappropriate behavior and sexual abuse of minor students, he was moved by the Defendants among several different locations before being transferred from Damien.

19. Brouillette has been charged and/or convicted of crimes involving children including offenses related to child pornography and solicitation of sex with a minor.

20. The Defendants allowed Brouillette to have unsupervised and

unlimited access to children at Damien.

21.The Defendants did not tell any of the students or their parents, including Plaintiffs or their parents, that they knew or should have known that Brouillette was a known child molester. The Defendants also did not tell any of the students or their parents that they had or should have had information that Brouillette had a pattern of grooming and molesting boys.

22.Before Plaintiffs were first sexually abused by Brouillette, the Defendants knew or should have known material facts regarding Brouillette's sexual misconduct, impulses and behavior, but failed to act on that knowledge thereby increasing the likelihood that Plaintiff would be harmed. The Defendants' failure to act on that knowledge also contributed to Plaintiffs' injuries and inability to: appreciate the abuse and resulting injuries sustained; or obtain help for the abuse and injuries suffered.

23.The Defendants engaged in a pattern and practice of fraudulent conduct in order to conceal the criminal and harmful acts of its agents and employees. The Defendants, by and through their agents, persons controlling and/or directing the Defendants' organizations, misrepresented and/or failed to present the facts of known sexual misconduct to victims, their families, students, the public and/or law enforcement

authorities for the furtherance of a scheme to protect predatory priests and other clergy from criminal prosecution, to maintain or increase charitable contributions and/or avoid public scandal thereby creating and perpetuating a conspiracy of silence and/or misrepresentation.

24. By holding out Brouillette as a qualified brother and teacher, employed by the Defendants, and by undertaking the instruction and spiritual and emotional guidance of the minor Plaintiffs, Defendants entered into a special relationship with Plaintiffs. As a result of Plaintiffs being minors, and by Defendants undertaking the care and guidance of the then vulnerable Plaintiffs, the Defendants held a position of empowerment over Plaintiffs.

25. Further, Defendants and others within the Church and school held themselves out to students and their parents, including Plaintiffs, as counselors and instructors on matters that were spiritual, moral, and ethical. Accordingly, Plaintiffs placed trust in Defendants so that Defendants gained superiority and influence over Plaintiffs. Defendants, by maintaining and encouraging such a relationship with Plaintiffs and preventing the then minor Plaintiffs from effectively protecting themselves, entered into a fiduciary relationship with Plaintiffs.

26. This fiduciary relationship with Plaintiffs established a duty of good faith, fair dealing and the duty to act with the highest degree of trust and confidence. This fiduciary relationship included the duty to warn, and to disclose, and the duty to protect children from sexual abuse and exploitation by Catholic employees whom the Defendants promoted as being safe with children. The Defendants' fiduciary relationship with Plaintiffs was based upon a justifiable trust on Plaintiffs' side and superiority and influence on Defendants' side.

27. At all times material, by accepting custody of then minor Plaintiffs, the Defendants accepted custody *in loco parentis*, as a parent, and owed Plaintiffs the duty of full disclosure of all the information they had or should have had regarding Brouillette's history of sexual misconduct.

28. Further, the leaders of the Defendants were in a specialized or superior position to receive and did receive specific information regarding misconduct by brothers, priests and other agents and employees that was of critical importance to the well-being, protection, care and treatment of innocent victims, including Plaintiffs. This knowledge was not otherwise readily available. The Defendants exercised its special or superior position to assume control of said knowledge and any response thereto.

29.Plaintiffs, on the other hand, were in a subordinate position of weakness, vulnerability, and inequality and were lacking in such knowledge. Further, the ability of Plaintiffs or their families to monitor the use or misuse of the power and authority of the Defendants was compromised, inhibited or restricted by Defendants.

30.The Defendants had a secular standard of fiduciary duty that they breached by failing to act upon, or insufficiently acted upon or responded to, information that they had obtained by virtue of their superior status, known only or secretly to them, that was indicative or highly suggestive of a pattern of wrongful, unlawful or criminal behavior on their parts.

31.The Defendants breached this duty, as well as other duties, through inaction, manipulation, intimidation, evasion, intended deception, undue influence, duress or otherwise, as more fully described and set forth elsewhere in this complaint, resulting in negative consequences to the welfare and well-being of Plaintiffs.

32.By tradition, Roman Catholics and those within their custody and control, including Plaintiffs, are taught to hold religious figures in the highest esteem as earthly representatives of God, and that religious figures, unlike lay people, belong to a separate and higher state in life, which they represent to be of divine origin and which they represent

entitles them to special privileges. For these and other reasons relating to the practices of the Church, religious figures and other persons in leadership positions in the Church have traditionally occupied positions of great trust and allegiance among parents and youth, including Plaintiffs.

33. By placing Brouillette at Damien on multiple occasions, the Defendants, through their agents, affirmatively represented to minor children and their families at the school, that Brouillette did not have a history of molesting children, that the Defendants did not know that Brouillette had a history of molesting children and that the Defendants did not know that Brouillette was a danger to children.

34. By allowing Brouillette to remain in active ministry, the Defendants, through their agents, made continuing affirmative representations to minor children and their families, including Plaintiffs and their families, that Brouillette did not have a history of molesting children, that the Defendants did not know that Brouillette had a history of molesting children and that the Defendants did not know that Brouillette was a danger to children.

35. Apart from the representations made directly to Plaintiffs, the Defendants, through their agents, made these representations with the knowledge and intent that they would be communicated to the minor Plaintiffs through their parents'

Roe /Complaint

words and actions. The Defendants also had reason to believe that the representations made to Plaintiffs' parents would influence Plaintiffs and particularly that the representations would influence the amount and type of time spent alone with Brouillette, Brouillette's access to Plaintiffs, and Brouillette's ability to molest Plaintiffs.

36.The Defendants were in a specialized position where they had knowledge that Plaintiffs did not. The Defendants were in a position to have this knowledge because they were Brouillette's employers and because the Defendants were responsible for Brouillette. Plaintiffs, on the other hand, were children. As children, they were not in a position to have information about Brouillette's inappropriate tendencies towards children.

37.Particularly, the Defendants knew or should have known that Brouillette had sexually molested numerous children and that Brouillette was a danger to children before Brouillette molested Plaintiffs.

38.Because Defendants were in positions of superiority and influence over them, Plaintiffs believed and relied upon these misrepresentations.

39.Had Plaintiffs or their families known what the Defendants knew or should have known that Brouillette had sexually molested numerous children before Plaintiffs and that

Brouillette was a danger to children, Plaintiffs would not have been sexually molested.

40. In instances where the Church, including leaders of the Defendants, had actual knowledge or should have known about offending priests, clerics, brothers, and/or consecrated members of religious communities, including Brouillette, they failed to warn children and their parents and denied knowledge thereof.

41. Despite having actual or constructive knowledge of Brouillette's pedophile propensities and previous instances of molestation of other children, the Defendants engaged in a conspiracy of silence concealing the danger which he and other offending priests, clerics, brothers, and/or consecrated members of religious communities presented by misrepresenting them as in good standing, thus enabling those offenders to retain their continued, unrestricted access to minor children.

42. Plaintiffs had the right to rely, and did rely, on the representations and teachings of the Defendants including, but not limited to, representations regarding priests, clerics, brothers, and/or consecrated members of religious communities in general and Brouillette in particular (including the representation that Brouillette was in good standing). Plaintiffs also expected and believed that the Defendants would not tolerate criminal misconduct that represented a

known threat to children by any priests, clerics, brothers, and/or consecrated members of religious communities.

43.As a result of their early instruction and indoctrination, it would never have occurred to Plaintiffs that any priests, clerics, brothers, and/or consecrated members of religious communities would engage in criminal behavior, or knowingly or actively conceal criminal behavior. Accordingly, even after Brouillette had sexually molested them, Plaintiffs assumed that they were somehow the guilty parties, rather than Brouillette.

44.Further, as a result of that early instruction and indoctrination, Plaintiffs assumed that Brouillette's sexual molestation of them was an isolated occurrence and that the Defendants were unaware and uninvolved, regarding both the criminal sexual behavior and the wide-ranging efforts to conceal that criminal conduct from them and others.

45.The sexual abuse of Plaintiffs and the circumstances under which it occurred caused Plaintiffs to develop confusion, various coping mechanisms and symptoms of psychological disorders, including post-traumatic stress disorder, anxiety, depression, repression and disassociation. As a result of: 1) these disorders; and 2) Defendants' fraudulent conduct, Plaintiffs formed a reasonable and rational fear that they would be disbelieved and were unable to fully perceive or

know that: 1) the conduct of Brouillette was pervasive; 2) the Church and Defendants knew or had reason to know that Brouillette was a pedophile prior to their abuse; 3) the Defendants were responsible for the abuse; and 4) the injuries they suffered were the result of the abuse. Because Plaintiffs' emotional and psychological injuries at times manifested themselves in ways seemingly unconnected to the sexual abuse by Brouillette, Plaintiffs were unable to perceive or know the existence or nature of their psychological and emotional injuries and their causal connection to the sexual abuse.

46.As a direct result of the sexual abuse and sexual exploitation and other wrongful conduct described herein, Plaintiffs have suffered and continue to suffer from injuries including, but not limited to: great pain of mind and body; severe and permanent emotional distress; physical manifestations of emotional distress; psychological injuries, including post-traumatic stress disorder and depression; feelings of shame, embarrassment, and powerlessness; were prevented and will continue to be prevented from performing normal daily activities and obtaining the full enjoyment of life; will incur expenses for medical and psychological treatment, therapy and counseling; and have incurred and will continue to incur loss of income and/or loss of earning

Roe /Complaint

capacity.

COUNT ONE

SEXUAL ASSAULT AND BATTERY AGAINST THE CONGREGATION OF
CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH
SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII;
BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS

47. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

48. While Plaintiffs were minor children, Brouillette intentionally touched and manipulated the body and genitals of Plaintiffs in a sexual manner.

49. At all times material, the aforesaid conduct of Brouillette was offensive to Plaintiffs and done without Plaintiffs' consent.

50. Brouillette knew or should have known that Plaintiffs would find such conduct offensive.

51. As a direct result of Brouillette's intentional conduct, Plaintiffs have suffered the injuries and damages described herein.

COUNT TWO

VICARIOUS LIABILITY AGAINST THE CONGREGATION OF CHRISTIAN
BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE
ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; BROTHER ROBERT
BROUILLETTE; AND ALL DOE DEFENDANTS

52. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

53. The Defendants hired, trained, and educated Brouillette for

his employment.

54. At all times material, the Defendants granted Brouillette power to perform as a brother, spiritual leader, teacher, and to work with children.

55. The Defendants, their agents, servants, and employees, held out Brouillette to children and their parents, including Plaintiffs and their families, as a fit and competent agent of Defendants.

56. Brouillette engaged in unpermitted, harmful and offensive sexual contact upon the person of Plaintiffs. Said conduct was undertaken while Brouillette was an employee and agent of the Defendants, while in the course and scope of employment with the Defendants, was ratified by the Defendants, and/or was accomplished by virtue of Brouillette's job-created authority.

57. Plaintiffs allege upon information and belief, at all times material, Brouillette was under the direct supervision and control of the Defendants when he negligently, grossly negligently and/or intentionally performed his duties and committed the wrongful acts described herein.

58. Brouillette was acting at least in part to serve the interests of his employer when he committed the sexual abuse. Specifically, Brouillette was acting as a brother and/or teacher and/or counselor and/or spiritual director, as well as

Roe /Complaint

using the trust, power, and authority of the position granted, while he was with Plaintiffs. Simultaneously, Brouillette used that same power and authority to gain Plaintiffs' confidence and trust to sexually abuse Plaintiffs.

59. By using his position as a teacher, brother and spiritual leader, and the trust, power, and authority of the position conferred upon him, Brouillette purported to act and/or speak on behalf of the Defendants when he committed the tortious and/or criminal acts alleged herein. Plaintiffs further relied on Brouillette's apparent authority to act on behalf of the Defendants.

60. Brouillette would not have been able to commit the sexual abuse were he not given the authority to act as a religious leader by the Defendants under their direct supervision. Brouillette conducted his tortious and/or criminal conduct during his agency relationship with the Defendants while providing ministry and educational instruction to Plaintiffs. Therefore, the Defendants are liable for the negligent, grossly negligent and/or wrongful conduct of Brouillette under the law of vicarious liability, including the doctrine of respondeat superior.

61. As a result of the above-described conduct, Plaintiffs have suffered the injuries and damages described herein.

COURT THREE

GROSS NEGLIGENCE AGAINST THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS

62.Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

63.Defendants assumed a duty to Plaintiffs by:

- a. holding Brouillette out to the public, including Plaintiffs, as a competent and trustworthy employee, representative, brother, teacher and counselor of high morals;
- b. holding out its facilities and school as a safe environment for children;
- c. taking and inviting children into its facilities;
- d. entrusting children to the care of Brouillette during extracurricular activities; and
- e. fostering an environment in which Plaintiffs were inhibited from reporting the sexual abuses against him.

64.The Defendants grossly negligently breached this duty by exposing Plaintiffs to Brouillette, an unfit agent with dangerous and exploitive propensities.

65.As a result of the above-described conduct, Plaintiffs have suffered the injuries and damages described herein.

COUNT FOUR

**FRAUD (INTENTIONAL MISREPRESENTATION) AGAINST THE CONGREGATION
OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH
SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII;
BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS**

66.Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

67.The Defendants affirmatively represented to Plaintiffs that Brouillette did not have a history of molesting children, that the Defendants did not know that Brouillette had a history of molesting children, and/or that the Defendants did not know that Brouillette was a danger to children.

68.The Defendants knew or should have known that Brouillette had a history of sexually molesting children and/or was a danger to children.

69.Whether Brouillette had a history of molesting children, whether the Defendants knew or should have known that Brouillette had a history of molesting children, and/or whether the Defendants knew or should have known that Brouillette was a danger to children were all material facts to Plaintiffs.

70.Had Plaintiffs known that Brouillette had a history of sexually molesting children and/or that the Defendants knew or should have known that Brouillette had a history of sexually molesting children, Plaintiffs would have acted differently and would never have spent unsupervised time with Brouillette.

71.The Defendants made the misrepresentations with the intent to induce Plaintiffs to act on the misrepresentations, which Plaintiffs did to their detriment.

72.Plaintiffs justifiably relied upon the Defendants' misrepresentations which caused them to be sexually molested by Brouillette and suffer the other damages described herein.

73.The Defendants knew that their misrepresentations were false or at least were reckless and without care of whether these representations were true or false.

74.The Defendants' misrepresentations were a proximate cause of Plaintiffs' damages.

75.As a result of the above-described conduct, Plaintiffs have suffered the injuries and damages described herein.

COUNT FIVE

FRAUD (GROSSLY NEGLIGENT MISREPRESENTATION) AGAINST THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS

76.Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth in this count.

77.The Defendants, through their agents, represented to Plaintiffs and their family that Brouillette did not have a history of molesting children and that Brouillette was not a danger to children.

78.Brouillette did have a history of sexually molesting

children and was a danger to children.

79.The Defendants owed a duty of care to Plaintiffs because they knew or should have known that Brouillette would have access to children, including Plaintiffs, knew or should have known that Brouillette was a danger to children, should have known that Brouillette had molested children before he molested Plaintiffs, and knew or should have known that parents and children would place the utmost trust in Brouillette.

80.The Defendants, through their agents, in acts separate from and before their representations, grossly failed to use ordinary care in making the representations or in ascertaining facts related to Brouillette. The Defendants knew or reasonably should have foreseen that their representations would subject Plaintiffs to the unreasonable risk of harm.

81.The Defendants grossly failed to use ordinary care to determine Brouillette's history of molesting children and whether he was safe for work with children before the Defendants made their representations about Brouillette.

82.Plaintiffs believed and justifiably relied upon the Defendants' representations that caused them to be sexually molested by Brouillette.

83.As a result of the above-described conduct, Plaintiffs have suffered the injuries and damages described herein.

COUNT SIX

**FRAUD (INTENTIONAL NON-DISCLOSURE) AGAINST THE CONGREGATION OF
CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH
SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII;
BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS**

84. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth in this count.

85. As a result of Plaintiffs being minors and the relationships between the Plaintiffs and the Defendants described herein, and by the Defendants undertaking the care and guidance of the then vulnerable Plaintiffs, the Defendants held a position of empowerment over Plaintiffs to such an extent that Plaintiffs were prevented from effectively protecting themselves from Brouillette, absent the disclosure of the material facts described herein.

86. The Defendants had special knowledge of the material facts that brothers and priests including, but not limited to Brouillette regularly were participating in sexual activity. The Defendants also had knowledge or should have had knowledge of the material facts that priests, clerics, brothers, and/or consecrated members of religious communities generally, and Brouillette particularly, participated in sexual activity with minors. Plaintiffs did not have access to these material facts which prevented Plaintiffs from effectively protecting themselves against Brouillette.

87.The Defendants had special knowledge or should have had knowledge of the material facts that Brouillette participated in sexual activity with minors prior to Brouillette having sexual contact with Plaintiffs. Plaintiffs did not have access to these material facts which prevented Plaintiffs from effectively protecting themselves from Brouillette.

88.The Defendants, through their agents, had a duty to disclose to Plaintiffs the material facts described in this Complaint.

89.The Defendants, through their agents, intentionally did not disclose the facts described in this Complaint to the then minor Plaintiffs in order to induce them to act on the misrepresentations to their detriment.

90.Plaintiffs relied upon these intentional non-disclosures, which caused them to be sexually molested by Brouillette.

91.As a result of the above-described conduct, Plaintiffs have suffered the injuries and damages described herein.

COUNT SEVEN

GROSSLY NEGLIGENT RETENTION AGAINST THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS

92.Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

93.The Defendants, by and through their agents, knew or should reasonably have known of Brouillette's dangerous and exploitive propensities as a child sexual abuser and his tendencies towards inappropriate sexual relationships, and despite such knowledge, the Defendants employed and continued to employ Brouillette in a position of trust and authority as a brother, counselor, and teacher without proper or adequate supervision, thereby providing him the opportunity to commit the wrongful acts against Plaintiffs described herein.

94.Despite such knowledge, the Defendants grossly negligently deemed Brouillette a fit agent for ministry and teaching and employed and continued to employ Brouillette in a position of trust and authority as a brother and teacher without proper or adequate supervision, thereby providing him the opportunity to commit the wrongful acts against Plaintiffs described herein.

95.As a result of the above-described conduct, Plaintiffs have suffered the injuries and damages described herein.

COUNT EIGHT

GROSSLY NEGLIGENT SUPERVISION AGAINST THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS

96.Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

97.Plaintiffs allege, upon information and belief, that at all times material Brouillette was employed by the Defendants and was under the direct supervision and control of the Defendants when he intentionally and/or grossly negligently performed his duties and committed the wrongful acts described herein. Brouillette had apparent and actual authority on behalf of the Defendants and engaged in the wrongful conduct while acting in the course and scope of his employment with the Defendants and/or accomplished the sexual abuse by virtue of his job-created authority.

98.The Defendants had a duty to exercise care in supervising Brouillette in his assignment and failed to prevent the injuries sustained by Plaintiffs as a result of the foreseeable misconduct of their employee, Brouillette.

99.The aforesaid occurrences were caused by or contributed to by the negligence, carelessness and recklessness and the willful, wanton, reckless, and grossly negligent conduct of the Defendants, their agents, servants and/or employees, in failing to properly and adequately supervise the conduct of Brouillette as it related to the Plaintiffs, other young children, other parishioners and/or other students.

100.The Defendants knew or should have known of Brouillette's inappropriate propensities towards sexual conduct with youth

whom he came in contact with as a result of his position as a brother and teacher.

101. That as a result of the Defendants' inadequate supervision of Brouillette, Plaintiffs were sexually abused by Brouillette when Plaintiffs were minor children.

102. As a result of the above-described conduct, Plaintiffs have suffered the injuries and damages described herein.

COUNT NINE

INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS AGAINST THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS

103. Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

104. Brouillette's conduct toward Plaintiffs, as described herein, was outrageous and extreme.

105. A reasonable person would not expect or tolerate the sexual harassment, molestation and abuse of Plaintiffs by Brouillette. Plaintiffs had great trust, faith and confidence in Brouillette, and in Defendants, which, by virtue of Brouillette's and Defendants' wrongful conduct, turned to fear.

106. Defendants' conduct toward Plaintiffs, as described herein, was outrageous and extreme.

107. A reasonable person would not expect or tolerate Defendants putting Brouillette, who was known to Defendants to be a child molester and a child abuser, in contact with minors at Damien. Defendants' acts and/or failures to act enabled Brouillette to have access to minor students so that he could commit wrongful sexual acts, including the conduct described herein, with minors, including Plaintiffs. Plaintiffs had great trust, faith and confidence in Defendants, which by virtue of Defendants' wrongful conduct, turned to fear.

108. A reasonable person would not tolerate or expect Defendants to be incapable of supervising and/or stopping employees of Defendants, including Brouillette, from committing wrongful sexual acts with minors, including Plaintiffs. Plaintiffs had great trust, faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

109. Defendants' conduct described herein was intentional and malicious and done for the purpose of causing or with the substantial certainty that Plaintiffs would suffer humiliation, mental anguish, and emotional and physical distress.

110. As a result of the above-described conduct, Plaintiffs have suffered and continue to suffer pain and suffering,

including but not limited to, anxiety, embarrassment and emotional distress.

111.Plaintiffs, based on information and belief, allege that the conduct of Defendants was oppressive, malicious and despicable in that it was intentional and done in conscious disregard for the rights and safety of others, and was carried out with a conscious disregard of others including Plaintiffs' right to be free from such tortious behavior, such as to constitute oppression, fraud or malice.

COUNT TEN

GROSSLY NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS AGAINST THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS

112.Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

113.Brouillette's conduct toward Plaintiffs, as described herein, was outrageous and extreme.

114.A reasonable person would not expect or tolerate the sexual harassment, molestation and abuse of Plaintiffs by Brouillette. Plaintiffs had great trust, faith and confidence in Brouillette, and in Defendants, which, by virtue of Brouillette's and Defendants' wrongful conduct, turned to fear.

115. Defendants' conduct toward Plaintiffs, as described herein, was outrageous and extreme.

116. A reasonable person would not expect or tolerate Defendants putting Brouillette, who was known and/or should have been known to Defendants to be a child molester and a child abuser, in contact with minors at Damien. Defendants' acts and/or failures to act enabled Brouillette to have access to minor students and so that he could commit wrongful sexual acts, including the conduct described herein, with minors, including Plaintiffs. Plaintiffs had great trust, faith and confidence in Defendants, which by virtue of Defendants' wrongful conduct, turned to fear.

117. A reasonable person would not tolerate or expect Defendants to be incapable of supervising and/or stopping employees of Defendants, including Brouillette, from committing wrongful sexual acts with minors, including Plaintiffs. Plaintiffs had great trust, faith and confidence in Defendants, which, by virtue of Defendants' wrongful conduct, turned to fear.

118. Defendants' conduct described herein was grossly negligent and done for the purpose of causing or with the substantial certainty or reckless or conscious disregard of the likelihood that Plaintiffs would suffer humiliation, mental anguish, and emotional and physical distress.

119.As a result of the above-described conduct, Plaintiffs have suffered and continue to suffer pain and suffering, including but not limited to, anxiety, embarrassment and emotional distress.

120.Plaintiffs, based on information and belief, allege that the conduct of Defendants was grossly negligent, oppressive, malicious and despicable in that it was done in reckless manner or with a conscious disregard for the rights and safety of others including Plaintiffs, and was carried out with a conscious disregard of their right to be free from such tortious behavior, such as to constitute oppression, fraud or malice.

COUNT ELEVEN

PUNITIVE DAMAGES AGAINST THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; BROTHER ROBERT BROUILLETTE; AND ALL DOE DEFENDANTS


121.Plaintiffs incorporate all paragraphs of this Complaint as if fully set forth under this count.

122.The conduct of the Defendants or each of them constituted gross negligence, intentional, willful and wanton, or malicious misconduct or was conducted with such a want of care as to constitute a conscious indifference to the rights of others

including Plaintiffs warranting the imposition of punitive damages.

WHEREFORE, Plaintiffs pray that judgment be entered in their favor, and against Defendants, jointly and severally for general, special, and punitive damages, together with costs of suit, attorney's fees, pre- and post-judgment interest, and other relief pursuant to Rule 54 of the Hawaii Rules of Civil Procedure.

DATED: Honolulu, Hawaii, November 5, 2012.



Mark Gallagher, Esq.
Attorney for Plaintiffs John Roe
No. 3 and John Roe No. 4