

1ST CIRCUIT COURT
STATE OF HAWAII
FILED

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N. ANAYA
CLERK

Attorney for Plaintiffs

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

JOHN ROE NO. 9 AND JOHN ROE NO. 10,

Plaintiffs,

vs.

CANONS REGULAR ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, Inc.; 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 HAWAII, a Hawaii not for profit corporation; FR. GERALD FUNCHEON; 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. 13-1-0821-03 VLC
(Non-Motor Vehicle Tort)

COMPLAINT; SUMMONS; DEMAND FOR JURY TRIAL

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

N. Anaya
Clerk, Circuit Court, First Circuit

COMPLAINT

Plaintiffs John Roe No. 9 and John Roe No. 10,
fictitious names used to protect Plaintiffs' privacy interest,

allege the following against Defendants CANONS REGULAR ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, Inc.; 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 HAWAII, a Hawaii not for profit corporation; and FR. GERALD FUNCHEON:

PARTIES

- a. Plaintiff John Roe No. 9 (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 No. 10 (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 Canons Regular of the Order of the Holy Cross doing business in Minnesota as the Crosier Fathers and Brothers Province, Inc., and Canons Regular of the Order of the Holy Cross, Province of St. Odilia, a/k/a Crosier Fathers and Brothers, Inc., (hereinafter referred to as "Crosiers"), was and continues to be a Roman Catholic religious order of priests

and brothers affiliated with the Roman Catholic Church. The Crosiers' principle place of business is located at 104 North Crosier Drive, Onamia, Minnesota 56359.

d. At all times material to the Complaint, Defendant The Congregation of Christian Brothers of Hawaii, Inc., was and continues to be a Hawaii not for profit corporation trading as and doing business as Damien Memorial School (hereinafter referred to as "Damien"), a 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.

e. 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.

f. At all times material, Defendant Father Gerald Funcheon (hereinafter referred to as "Funcheon"), was a Roman Catholic Priest, a member of, educated by, and under the

direct supervision, authority, employ, and control of the other Defendants.

- g. 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.
- h. 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 Plaintiffs have suffered as alleged herein.
- i. Plaintiffs have satisfied the requirements of Hawaii Revised Statutes, Section 657-1.8.

FACTS

1. Plaintiff John Roe No. 9 was born, raised, and resided at all relevant times in the City and County of Honolulu, State of Hawaii, and attended summer school at Damien in approximately 1982 and/or 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 Funcheon.
2. Plaintiff John Roe No. 10 was born, raised, and resided at all relevant times in the City and 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 Funcheon.

3. At all times material, Funcheon was a Catholic priest, 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, Funcheon began working as a school-community chaplain/teacher at Damien in approximately 1982.
5. Damien exists within the borders and jurisdiction of Defendant Diocese for its benefit and under its control.
6. Generally, Funcheon's employment duties with the Crosiers and Damien included teaching and working with children. Funcheon was a priest and 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 at Damien where they came to know, admire, trust, revere, and respect Funcheon as a person of great influence and persuasion as an authority figure, priest, teacher, spiritual advisor, and counselor.

8. Each and all of the Defendants were responsible for the care and well-being of the minor students at Damien. 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 Funcheon were engaged.

FACTUAL ALLEGATIONS SPECIFIC TO JOHN ROE NO. 9

9. In approximately 1982 or 1983, when Plaintiff John Roe No. 9 was approximately twelve to thirteen years old, Funcheon served as Plaintiff's priest, teacher, spiritual director and/or counselor at Damien.

10. In approximately 1982 or 1983, when Plaintiff John Roe No. 9 was approximately twelve to thirteen years old, Funcheon, using his position of authority, trust, reverence, and control as a Roman Catholic priest 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 criminal offenses under part V or VI of chapter 707 (Haw. Rev. Stat. Sections 707-730 (2011)).

11. The sexual abuse and exploitation occurred on several occasions and reflected a greater pattern of conduct by Funcheon and Defendants that occurred at Damien and within the Diocese for multiple years. At all times relevant,

Plaintiff was entrusted to Defendants' care, custody, and control and while Funcheon was under the direct supervision, employ, and control of Defendants.

12. Funcheon's practice of sexually accessing children and abuse was known or should have been known to Defendants. Funcheon's abuse and grooming of Plaintiff John Roe No. 9 included, but was not limited to isolating Plaintiff, accompanying Plaintiff on trips to the beach, taking Plaintiff on a trip to Kauai, Hawaii, forcing Plaintiff to participate in various sexual acts including performing oral sex on Plaintiff, digital penetration of Plaintiff, masturbation of Plaintiff, exposing his penis to Plaintiff, and forcing Plaintiff to masturbate him. These acts occurred in multiple locations including, but not limited to on campus at Damien, around the Damien campus, and in a hotel on a trip to Kauai.

FACTUAL ALLEGATIONS SPECIFIC TO JOHN ROE NO. 10

13. In approximately 1983 or 1984, when Plaintiff John Roe No. 10 was approximately thirteen to fourteen years old, Funcheon served as Plaintiff's priest, teacher, spiritual director and/or counselor at Damien.

14. In approximately 1983 or 1984, when Plaintiff John Roe No. 10 was approximately thirteen to fourteen years old, Funcheon, using his position of authority, trust,

reverence, and control as a Roman Catholic priest 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 offenses under part V or VI of chapter 707 (Haw. Rev. Stat. Sections 707-730 (2011)).

15. The sexual abuse and exploitation occurred on several occasions and reflected a greater pattern of conduct by Funcheon and Defendants that occurred at Damien and in the Diocese for multiple years. At all times relevant, Plaintiff was entrusted to Defendants' care, custody, and control and while Funcheon was under the direct supervision, employ, and control of Defendants.

16. Funcheon's practice of sexually accessing children and abuse was known or should have been known to Defendants. Funcheon's abuse and grooming of Plaintiff John Roe No. 10 included, but was not limited to isolating Plaintiff on a trip, providing Plaintiff with rides in his car, touching and groping Plaintiff in a sexually inappropriate manner while in the shower, forcing Plaintiff to participate in various sexual acts including exposing his genitals to Plaintiff, and attempting to grope the Plaintiff's genitals on multiple occasions. These acts occurred on an overnight trip with other Damien students.

FACTUAL ALLEGATIONS AS TO BOTH PLAINTIFFS

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

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

19. Defendants allowed Funcheon to have unsupervised and unlimited access to children at Damien.

20. 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 Funcheon 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 Funcheon had a pattern of grooming and molesting boys.

21. Before Plaintiffs were first sexually abused by Funcheon, the Defendants knew or should have known material facts

regarding Funcheon's sexual misconduct, impulses and behavior, but failed to act on that knowledge thereby increasing the likelihood that Plaintiffs 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.

22. The Defendants engaged in a pattern and practice of fraudulent conduct in order to conceal the criminal and harmful acts of their 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.

23. By holding out Funcheon as a qualified priest 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.

24. 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.

25. 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.

26. 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 Funcheon's history of sexual misconduct.
27. Further, the leaders of the Defendants were in specialized or superior positions to receive and did receive specific information regarding misconduct by 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 their special or superior positions to assume control of said knowledge and any response thereto.
28. 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.
29. 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.

30. 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.

31. 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.

32. By placing Funcheon at Damien in approximately 1982 through 1984, the Defendants, through their agents, affirmatively represented to minor children and their

families at the school, that Funcheon did not have a history of molesting children, that the Defendants did not know that Funcheon had a history of molesting children and that the Defendants did not know that Funcheon was a danger to children.

33. By allowing Funcheon 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 Funcheon did not have a history of molesting children, that the Defendants did not know that Funcheon had a history of molesting children and that the Defendants did not know that Funcheon was a danger to children.

34. 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' 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 Funcheon, Funcheon's access to Plaintiffs, and Funcheon's ability to molest Plaintiffs.

35. 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 Funcheon's employers and because the Defendants were responsible for Funcheon. Plaintiffs, on the other hand, were children. As children, they were not in a position to have information about Funcheon's inappropriate tendencies towards children.

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

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

38. Had Plaintiffs or their families known what the Defendants knew or should have known that Funcheon had sexually molested numerous children before Plaintiffs and that Funcheon was a danger to children, Plaintiffs would not have been sexually molested.

39. 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 Funcheon, they

failed to warn children and their parents and denied knowledge thereof.

40. Despite having actual or constructive knowledge of Funcheon'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.

41. Plaintiffs had the right to rely, and did reasonably 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 Funcheon in particular (including the representation that Funcheon 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.

42. 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 Funcheon had sexually molested them, Plaintiffs assumed that they were somehow the guilty parties, rather than Funcheon.

43. Further, as a result of that early instruction and indoctrination, Plaintiffs assumed that Funcheon'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.

44. 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 Funcheon was pervasive; 2) the Church and Defendants knew or had reason to know that Funcheon 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 Funcheon, 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.

45. 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 capacity.

COUNT ONE

SEXUAL ASSAULT AND BATTERY AGAINST CANONS OF THE REGULAR ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN

**BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE
ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD
FUNCHEON; AND ALL DOE DEFENDANTS**

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

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

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

49. Funcheon knew or should have known that Plaintiffs would find such conduct offensive.

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

COUNT TWO

**VICARIOUS LIABILITY AGAINST CANONS OF THE ORDER OF THE HOLY
CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS
PROVINCE, INC.; CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII,
INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH
IN THE STATE OF HAWAII; AND ALL DOE DEFENDANTS**

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

52. The Defendants hired, trained, and educated Funcheon for his employment.

53. At all times material, the Defendants granted Funcheon

power to perform as a priest, spiritual leader, teacher, and to work with children.

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

55. Funcheon engaged in unpermitted, harmful and offensive sexual contact upon the person of Plaintiffs. Said conduct was undertaken while Funcheon 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 Funcheon's job-created authority.

56. Plaintiffs allege upon information and belief, at all times material, Funcheon 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.

57. Funcheon was acting at least in part to serve the interests of his employer when he committed the sexual abuse. Specifically, Funcheon was acting as a priest and/or teacher and/or counselor and/or spiritual director, as well as using the trust, power, and authority of the position granted, while he was with Plaintiffs.

Simultaneously, Funcheon used that same power and authority to gain Plaintiffs' confidence and trust to sexually abuse Plaintiffs.

58. By using his position as a teacher, priest and spiritual leader, and the trust, power, and authority of the position conferred upon him, Funcheon 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 Funcheon's apparent authority to act on behalf of the Defendants.

59. Funcheon 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. Funcheon 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 Funcheon under the law of vicarious liability, including the doctrine of respondeat superior.

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

COURT THREE

GROSS NEGLIGENCE AGAINST CANONS REGULAR OF THE ORDER OF THE

HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

62. Defendants assumed a duty to Plaintiffs by:

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

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

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

COUNT FOUR

FRAUD (INTENTIONAL MISREPRESENTATION) AGAINST CANONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

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

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

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

69. Had Plaintiffs known that Funcheon had a history of sexually molesting children and/or that the Defendants knew or should have known that Funcheon had a history of sexually molesting children, Plaintiffs would have acted

differently and would never have spent unsupervised time with Funcheon.

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

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

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

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

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

COUNT FIVE

FRAUD (GROSSLY NEGLIGENT MISREPRESENTATION) AGAINST CANONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUCHEON; AND ALL DOE DEFENDANTS

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

76. The Defendants, through their agents, represented to

Plaintiffs and their family that Funcheon did not have a history of molesting children and that Funcheon was not a danger to children.

77. Funcheon did have a history of sexually molesting children and was a danger to children.

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

79. 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 Funcheon. The Defendants knew or reasonably should have foreseen that their representations would subject Plaintiffs to the unreasonable risk of harm.

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

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

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

COUNT SIX

FRAUD (INTENTIONAL NON-DISCLOSURE) AGAINST CANONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

84. 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 Funcheon, absent the disclosure of the material facts described herein.

85. The Defendants had special knowledge of the material facts that priests including, but not limited to Funcheon 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 Funcheon particularly, participated in sexual activity with minors. Plaintiffs did not have access to these material facts which prevented Plaintiffs from effectively protecting themselves against Funcheon.

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

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

88. 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.

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

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

COUNT SEVEN

GROSSLY NEGLIGENT RETENTION AGAINST CANONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; AND ALL DOE DEFENDANTS

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

92. The Defendants, by and through their agents, knew or should reasonably have known of Funcheon'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 Funcheon in a position of trust and authority as a priest, counselor, and teacher without proper or adequate supervision, thereby providing him the opportunity to commit the wrongful acts against Plaintiffs described herein.

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

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

COUNT EIGHT

GROSSLY NEGLIGENT SUPERVISION AGAINST CANONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; AND ALL DOE DEFENDANTS

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

96. Plaintiffs allege, upon information and belief, that at all times material Funcheon 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. Funcheon 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.

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

98. 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 Funcheon as it related to the Plaintiffs, other young children, other parishioners and/or other students.

99. The Defendants knew or should have known of Funcheon's inappropriate propensities towards sexual conduct with youth whom he came in contact with as a result of his position as a priest and teacher.

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

101. 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 CANONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUCHEON; AND ALL DOE DEFENDANTS

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

103. Funcheon's conduct toward Plaintiffs, as described herein, was outrageous and extreme.

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

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

106. A reasonable person would not expect or tolerate Defendants putting Funcheon, 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 Funcheon 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.

107. A reasonable person would not tolerate or expect Defendants to be incapable of supervising and/or stopping employees of Defendants, including Funcheon, 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.

108. 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.

109. 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.

110. 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 CANONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUNCHEON; AND ALL DOE DEFENDANTS

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

112. Funcheon's conduct toward Plaintiffs, as described herein, was outrageous and extreme.

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

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

115. A reasonable person would not expect or tolerate Defendants putting Funcheon, 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 Funcheon 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.

116. A reasonable person would not tolerate or expect Defendants to be incapable of supervising and/or stopping

employees of Defendants, including Funcheon, 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.

117. 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.

118. 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.

119. 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 CANONS REGULAR OF THE ORDER OF THE HOLY CROSS, PROVINCE OF ST. ODILIA, a/k/a CROSIER FATHERS AND BROTHERS PROVINCE, INC.; THE CONGREGATION OF CHRISTIAN BROTHERS OF HAWAII, INC. t/a DAMIEN MEMORIAL HIGH SCHOOL; THE ROMAN CATHOLIC CHURCH IN THE STATE OF HAWAII; FR. GERALD FUCHEON; AND ALL DOE DEFENDANTS

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

121. 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, March 19, 2013.

A handwritten signature in black ink, appearing to read "Mark Gallagher", is written above a horizontal line.

Mark Gallagher, Esq.
Attorney for Plaintiffs John Roe
No. 9 and John Roe No. 10

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

JOHN ROE NO. 9 AND JOHN ROE NO.
10,

Plaintiffs,

vs.

CANONS REGULAR OF THE ORDER OF
THE HOLY CROSS, PROVINCE OF ST.
ODILIA, a/k/a CROSIER FATHERS
AND BROTHERS PROVINCE, INC.; THE
CONGREGATION OF CHRISTIAN
BROTHERS OF HAWAII, INC, t/a
DAMIEN MEMORIAL SCHOOL;
ROMAN CATHOLIC CHURCH IN THE
STATE OF HAWAII; FATHER GERALD
FUNCHEON; 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.

(Non-Motor Vehicle Tort)

SUMMONS

SUMMONS

STATE OF HAWAI`I

To the above-named Defendants:

You are hereby summoned and required to file with the
court and serve upon THE LAW OFFICE OF MARK GALLAGHER,
Plaintiff's attorney, whose address is 776 Kailua Road, Suite
201, Kailua, Hawai'i 96734, an answer to the Complaint which is
herewith served upon you, within twenty (20) days after service

Roe Complaint

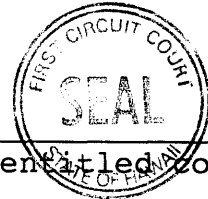
of this Summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the Complaint.

This summons shall not be personally delivered between 10:00 p.m. and 6:00 a.m. on premises not open to the general public, unless a judge of the above-entitled court permits, in writing on this summons, personal delivery during those hours.

A failure to obey this summons may result in an entry of default and default judgment against the disobeying person or party.

DATED: Honolulu, Hawai'i, MAR 19 2013.

N. ANAYA



Clerk of the above-entitled court

In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the First Circuit Court Administration Office at PHONE NO. 539-4333, FAX 539-4322, or TTY 539-4853, at least ten (10) working days prior to your hearing or appointment date.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAI`I

JOHN ROE NO. 9 AND JOHN ROE NO.
10,

Plaintiffs,

vs.

CANONS REGULAR OF THE ORDER OF
THE HOLY CROSS, PROVINCE OF ST.
ODILIA, a/k/a CROSIER FATHERS
AND BROTHERS PROVINCE, INC.; THE
CONGREGATION OF CHRISTIAN
BROTHERS OF HAWAII, INC, t/a
DAMIEN MEMORIAL SCHOOL;
ROMAN CATHOLIC CHURCH IN THE
STATE OF HAWAII; FATHER GERALD
FUCHEON; 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.

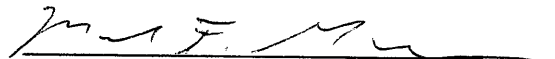
(Non-Motor Vehicle Tort)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL

Plaintiffs John Roe No. 9 and John Roe No. 10 hereby demand
trial by jury on all issues so triable.

DATED: Honolulu, Hawai'i, March 19, 2013.



Mark F. Gallagher, Esq.
Attorney for Plaintiffs John
Roe No. 9 and John Roe No. 10