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Attorney for Plaintiff,
Paul Joseph Borja

IN THE SUPERIOR COURT OF GUAM

PAUL JOSEPH BORJA,

Plaintiff,

v.

ROMAN CATHOLIC ARCHBISHOP OF AGANA, a Corporation sole; DOE ENTITIES 1-5; and DOE-INDIVIDUALS 6-50, inclusive

Defendants.

CIVIL CASE NO: CV 1045-16

VERIFIED COMPLAINT FOR DAMAGES FOR

1. **Child Sexual Abuse**
2. **Negligence**
3. **Negligent Supervision**
4. **Negligent Hiring and Retention**
5. **Breach of Fiduciary Duty / Confidential Relationship**

Plaintiff Paul Joseph Borja ("Paul") files this Complaint for damages based on prior sexual abuse (the "Complaint") against Defendants Archbishop of Agana, a corporation sole, and DOES 1-50 ("Defendants").

I.
JURISDICTION

1. This Court has jurisdiction pursuant to 7 GCA § 3105.

II.
PARTIES

2. At all times relevant hereto, Paul has been and is an individual who resides in Chalan Pago, Guam. Paul is currently 63-years old.

3. At all times relevant hereto, and upon information and belief, Roman Catholic Archbishop of Agana, a corporation sole, in accordance with the discipline and government of the Roman Catholic

Church, is the legal name for Defendant Archbishop of Agana, also known as Archdiocese of Agana. ("Agana Archdiocese"), which is and has been at all times relevant hereto a non-profit corporation organized and existing under the laws of Guam, authorized to conduct business and conducting business in Guam, with its principal place of business in Guam. Agana Archdiocese is responsible and liable in whole or in part, directly or indirectly, for the wrongful acts complained of herein.

4. Defendant-entities named herein as DOES 1 - 5, inclusive, are or at all times relevant hereto, were insurance companies that provided general liability coverage and / or excess level liability coverage pursuant to policies issued to the Agana Archdiocese and / or Roman Catholic Church of Guam. Defendant-individuals named here-in as DOES 6-50, inclusive, are at all times relevant hereto, were agents, employees, representatives and / or affiliated entities of the Agana Archdiocese and /or Roman Catholic Church outside of Guam whose true names and capacities are unknown to Paul who therefore sues such defendants by such fictitious names, and who will amend the Complaint to show the true names and capacities of each such Doe defendant when ascertained. DOES 6 -50 assisted, aided and abetted and / or conspired with Father Cruz and / or other members of the Agana Archdiocese to conceal, disguise, cover up, and / or promote the wrongful acts complained of herein. As such, each such Doe is legally responsible in some manner for the events, happenings, and / or tortious and unlawful conduct that caused the injuries and damages alleged in this Complaint.

5. Each defendant is the agent, servant and/or employee of other defendants, and each defendant was acting within the course and scope of his, her or its authority as an agent, servant and/or employee of the other defendants. Defendants, and each of them, are individuals, corporations, alter egos and partnerships of each other and other entities which engaged in, joined in and conspired with the other wrongdoers in carrying out the tortious and unlawful activities described in this Complaint; and defendants, each of them, ratified the acts of the other defendants as described in this Complaint.

III.
INTRODUCTORY ALLEGATIONS

6. In or about 1965, in or around the age of twelve (12), Paul was an altar boy at the Our Lady of Peace and Safe Journey Catholic Church ("Chalan Pago Parish"). At that time, Father Antonio C. Cruz ("Father Cruz"), who is now deceased, was a priest at the Chalan Pago Parish.

7. During the period in which he served as an altar boy, Paul was sexually molested and abused by Father Cruz, including oral copulation. One weekend, Father Cruz sought and obtained permission from Paul's mother requesting for Paul to meet him on the second floor of the Chalan Pago Parish, where Father Cruz resided at that time. When Paul arrived, Father Cruz was on the phone and motioned for Paul to come in. As soon as he hung up the phone, Father Cruz grabbed Paul, pulled down Paul's pants, and began performing oral copulation on him.

8. In or about 1968, Paul's family left Guam and moved to Alameda, California. For reasons unknown to Paul, Father Cruz was also in California. While in California, Paul's family invited Father Cruz to join them for dinner at their residence. After dinner, Father Cruz asked Paul to go for a walk around the block. No one in Paul's family was aware of his childhood sexual abuse by Father Cruz, so out of courtesy Paul agreed to go. While they were walking around the block, Father Cruz handed Paul an envelope and said, "this is for you". Paul waited until he was alone to open the envelope. Inside the envelope was $50 in cash. Paul got the impression that Father Cruz was trying to buy his silence.

9. In or about November 1986, Father Cruz died on or around the age of 62.

10. At all times relevant hereto, Father Cruz, prior to his death, was an individual and an agent of the Agana Archdiocese, a member of the clergy of the Agana Archdiocese, and a Catholic priest working for the Agana Archdiocese. At all times relevant hereto, Father Cruz, prior to his death, was a resident of Guam and was responsible and liable in whole or in part, directly or indirectly, for the wrongful acts complained of herein.

11. At all times relevant hereto, Father Cruz, prior to his death, sexually abused and molested Paul when Paul was a minor and committed such acts while serving as a priest in the Chalan Pago Parish, in his capacity as an agent and employee of the Agana Archdiocese, which is vicariously liable for his actions.

12. The Agana Archdiocese and DOES 1-50, inclusive, knew that Father Cruz had sexually abused and molested Paul, and rather than reporting the matter to law enforcement and without intervening so as to prevent Father Cruz from engaging in additional instances of sexual abuse, and without seeking to have Father Cruz acknowledge and take responsibility for his wrongful actions, they assisted Father Cruz with the specific purpose or design to keep Father Cruz's misconduct hidden and secret; to hinder or prevent Father Cruz's apprehension and prosecution; and to protect the Agana Archdiocese, as well as the Roman Catholic church as an international institution.

13. To this day, the Agana Archdiocese and DOES 1-50 never contacted Paul, Paul's family, or children they know Father Cruz had sexual contact with. The Agana Archdiocese and DOES 1-50 have been content that any other children that were sexually abused by Father Cruz while he was serving as a priest, will remain affected by guilt, shame and emotional distress.

14. The criminal offense of Child Abuse is defined in 9 GCA § 31.30, which states in pertinent part as follows:

> (a) A person is guilty of child abuse when:
> (1) he subjects a child to cruel mistreatment; or
> (2) having a child in his care or custody or under his control, he:
> * * *
> (B) subjects that child to cruel mistreatment; or
> (C) unreasonably causes or permits the physical or, emotional health of that child to be endangered

15. Under 9 GCA § 25.15 the crime of First Degree Criminal Sexual Conduct with regard to a child is set forth in pertinent parts as follows:

> (a) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with the victim and if any of the following circumstances exists:
> (1) the victim is under fourteen (14) years of age;

(2) the victim is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, the actor is related to the victim by blood or affinity to the fourth degree to the victim, or the actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

16. Under 19 GCA § 13101, the following relevant definitions are provided:

* * *

(b) Abused or neglected child means a child whose physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of the person(s) responsible for the child's welfare;

* * *

(d) Child means a person under the age of 18 years;

* * *

(t) Harm to a child's physical health or welfare occurs in a case where there exists evidence of injury, including but not limited to:

* * *

(2) Any case where the child has been the victim of a sexual offense as defined in the Criminal and Correctional Code; or

(3) Any case where there exists injury to the psychological capacity of a child such as failure to thrive, extreme mental distress, or gross emotional or verbal degradation as is evidenced by an observable and substantial impairment in the child's ability to function within a normal range of performance with due regard to the child's culture(.)

17. Under 9 GCA § 25A201, "sexual conduct" with a minor is defined as follows:

(o) Sexual Conduct means acts of sexual penetration, sexual contact, masturbation, bestiality, sexual penetration, deviate sexual intercourse, sadomasochistic abuse, or lascivious exhibition of the genital or pubic area of a minor.

18. Under 9 GCA § 25.10(8), "sexual contact" is defined as follows:

(8) Sexual Contact includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.

19. Under 9 GCA § 25.10(9), "sexual penetration" is defined as follows:

(9) Sexual Penetration means sexual intercourse, cunnilingus, fellatio, anal intercourse or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emissions see is not required.

20. Under 9 GCA § 25.20, the crime of Second Degree Criminal Sexual Misconduct with regard to a child is set forth in pertinent part as follows:

> (a) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:
> (1) that other person is under fourteen (14) years of age;
> (2) that other person is at least fourteen (14) but less than sixteen (16) years of age and the actor is a member of the same household as the victim, or is related by blood or affinity to the fourth degree to the victim, or is in a position of authority over the victim and the actor used this authority to coerce the victim to submit.

21. Under 19 GCA § 13201(b), the following are required to report child abuse:

> (b) Persons required to report suspected child abuse under Subsection (a) include, but are not limited to, ... clergy member of any religious faith, or other similar functionary or employee of any church, place of worship, or other religious organization whose primary duties consist of teaching, spreading the faith, church governance, supervision of a religious order, or supervision or participation in religious ritual and worship, ...

IV.
FIRST CAUSE OF ACTION

Child Sexual Abuse
[Against All Defendants]

22. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 21 of this Complaint as if fully set forth herein.

23. Defendants Agana Archdiocese and DOES 6 - 50 (collectively "Defendants" as alleged in this cause of action) are vicariously liable for the sexual abuse committed upon Paul by Father Cruz. Public policy dictates that Defendants should be held responsible for Father Cruz's wrongful conduct under the theory commonly referred to as *Respondeat Superior*.

24. Father Cruz, prior to his death, committed the offense of Second Degree Criminal Sexual Misconduct, as set forth in 9 GCA § 25.20, by engaging in sexual contact with Paul when Paul was under fourteen (14) years of age.

25. Father Cruz, prior to his death, also committed the offense of Child Abuse, as set forth in 9 GCA § 31.30 by subjecting Paul to cruel mistreatment, including but not limited to having Paul, who was a child at the time pursuant to 19 GCA § 13101(d), under his care, custody or control, unreasonably caused or permitted the physical or emotional health of the child to be endangered.

26. As a direct and proximate consequence of Father Cruz's misconduct, Paul was an abused or neglected child within the meaning of 19 GCA § 13101(b) because his physical or mental health or welfare was and continues to be harmed by the acts or omissions of Father Cruz, who was responsible for the child's welfare. Moreover, as Father Cruz's misconduct constitutes the commission of one or more criminal offenses, Paul has suffered harm to a child's physical health or welfare within the meaning of 19 GCA § 13101(t)(2) because Paul was the victim of a sexual offense as defined in the Criminal and Correctional Code (9 GCA)

27. For the reasons set forth in the incorporated paragraphs of this Complaint, the sexual abuse of Paul arose from and was incidental to Father Cruz's employment with the Agana Archdiocese, and while Father Cruz, was acting within the scope of his employment with the Agana Archdiocese at the time he committed the acts of sexual abuse, which were foreseeable to Defendants.

28. Defendants ratified and / or approved of Father Cruz's sexual abuse by failing to adequately investigate, discharge, discipline and / or supervise Father Cruz and other priests known by Defendants to have sexually abused children, or to have been accused of sexually abusing children; by concealing evidence of Father Cruz's sexual abuse; failing to intervene to prevent ongoing and / or further sexual abuse; by failing to report the sexual abuse as required under 19 GCA 13201(b); by allowing Father Cruz to continue in service as a Catholic priest working for the Agana Archdiocese.

29. Despite the pretense of policies and procedures to investigate and address instances of child sexual abuse by priests, Defendants in fact implemented such policies and procedures for no other purpose than to avoid scandal, maintain secrecy and preserve loyalty to fellow clergy, including child molesting clergy, rather than the protection of children. Such hypocritical conduct by Defendants has served to

systematically encourage, perpetuate and promote sexually abusive conduct by priests in the Agana Archdiocese.

30. Defendants either had actual knowledge of Father Cruz's sexual abuse of Paul, or could have and should have reasonably foreseen that Father Cruz would commit sexual abuse to Paul in the course of his employment as a priest in the Chalan Pago Parish, as an agent and employee of the Agana Archdiocese.

31. As a direct and proximate result of the Defendants' above – described conduct, Paul has suffered, and continues to suffer, great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; and has incurred and / or will continue to incur expenses for medical and psychological treatment, therapy and counseling.

32. By engaging in the conduct described herein, Defendants acted with malice, oppression, and/or fraud, entitling Paul to exemplary and punitive damages.

V.
SECOND CAUSE OF ACTION

Negligence
[Against All Defendants]

33. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 32 of this Complaint as if fully set forth herein.

34. Defendants Agana Archdiocese and DOES 6 - 50 (collectively "Defendants" as alleged in this cause of action) had a duty to protect Paul when he was entrusted to Father Cruz's care by Paul's parents. Paul's care, welfare, and / or physical custody were temporarily entrusted to Defendants, and Defendants accepted the entrusted care of Paul. As such, Defendants owed Paul, as a child at the time, a special duty of care, in addition to a duty of ordinary care, and owed Paul the higher duty of care that adults dealing with children owe to protect them from harm.

35. By virtue of his unique authority and position as a Roman Catholic priest, Father Cruz was able to identify vulnerable victims and their families upon which he could perform such sexual abuse; to

manipulate his authority to procure compliance with his sexual demands from his victims; to induce the victims to continue to allow the abuse; and to coerce them not to report it to any other persons or authorities. As a priest, Father Cruz had unique access to a position of authority within Roman Catholic families like the family of Paul. Such access, authority and reverence was known to the Defendants and encouraged by them.

36. Defendants, by and through their agents, servants and employees, knew or reasonably should have known of Father Cruz's sexually abusive and exploitative propensities and / or that Father Cruz was an unfit agent. It was foreseeable that if Defendants did not adequately exercise or provide the duty of care owed to children in their care, including but not limited to Paul, the children entrusted to Defendants' care would be vulnerable to sexual abuse by Father Cruz.

37. Defendants breached their duty of care to the minor Paul by allowing Father Cruz to come into contact with Paul as a child without supervision; by failing to adequately supervise, or negligently retaining Father Cruz whom they permitted and enabled to have access to Paul; by failing to properly investigate; by failing to inform or concealing from Paul's parents, guardians, or law enforcement officials that Father Cruz was or may have been sexually abusing minors; by holding out Father Cruz to Paul's parents or guardians, and to the community of Guam at large, as being in good standing and trustworthy as a person of stature and integrity. Defendants cloaked within the facade of normalcy Father Cruz's contact with Paul and / or with other minors who were victims of Father Cruz, and deliberately concealed and disguised the sexual abuse committed by Father Cruz.

38. As a direct and proximate result of the Defendants' above – described conduct, Paul has suffered, and continues to suffer, great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; and have incurred and / or will continue to incur expenses for medical and psychological treatment, therapy and counseling.

39. By engaging in the conduct described herein, Defendants acted with malice, oppression, and/or fraud, entitling Paul to exemplary and punitive damages.

VI.
THIRD CAUSE OF ACTION

Negligent Supervision
[Against All Defendants]

40. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 39 of this Complaint as if fully set forth herein.

41. Defendants Agana Archdiocese and DOES 6 - 50 (collectively "Defendants" as alleged in this cause of action) had a duty to provide reasonable supervision of both Father Cruz and minor child Paul; to use reasonable care in investigating Father Cruz; and to provide adequate warning to Paul's family, and to families of other children who were entrusted to Father Cruz, of Father Cruz's sexually abusive and exploitative propensities and unfitness.

42. Defendants, by and through their agents, servants and employees, knew or reasonably should have known of Father Cruz's sexually abusive and exploitative propensities and/or that Father Cruz was an unfit agent. Despite such knowledge, Defendants negligently failed to supervise Father Cruz in his position of trust and authority as a parish priest, where he was able to commit the wrongful acts against Paul alleged herein. Defendants failed to provide reasonable supervision of Father Cruz, failed to use reasonable care in investigating Father Cruz, and failed to provide adequate warning to Paul's family regarding Father Cruz's sexually abusive and exploitative propensities and unfitness. Defendants further failed to take reasonable measures to prevent future sexual abuse.

43. As a direct and proximate result of the Defendants' above – described conduct, Paul has suffered, and continues to suffer, great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life;

and have incurred and / or will continue to incur expenses for medical and psychological treatment, therapy and counseling.

44. By engaging in the conduct described herein, Defendants acted with malice, oppression, and/or fraud, entitling Paul to exemplary and punitive damages.

VII.
FOURTH CAUSE OF ACTION

Negligent Hiring And Retention
[Against All Defense]

45. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 44 of this Complaint as if fully set forth herein.

46. Defendants Agana Archdiocese and DOES 6 - 50 (collectively "Defendants" as alleged in this cause of action) had a duty not to hire and / or retain Father Cruz in light of his sexually abusive and exploitative propensities.

47. Defendants, by and through their agents, servants and employees, knew or reasonably should have known of Father Cruz's sexually abusive and exploitative propensities and / or that Father Cruz was an unfit agent. Despite such knowledge and / or an opportunity to learn of Father Cruz's misconduct, Defendants negligently hired and retained Father Cruz in his position of trust and authority as a parish priest, where he was able to commit the wrongful acts against Paul alleged herein. Defendants failed to properly evaluate Father Cruz's application for employment by failing to conduct necessary screening; failed to properly evaluate Father Cruz's conduct and performance as an employee of Defendants; and failed to exercise the due diligence incumbent upon employers to investigate employee misconduct, or to take appropriate disciplinary action, including immediate termination and reporting and referral of Father Cruz's sexual abuse to appropriate authorities. Defendants negligently continued to retain Father Cruz in service as a Catholic priest, working for Defendants, which enabled him to continue engaging in the sexually abusive and predatory behavior described herein.

48. As a direct and proximate result of the Defendants' above – described conduct, Paul has suffered, and continues to suffer, great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; and have incurred and / or will continue to incur expenses for medical and psychological treatment, therapy and counseling.

49. By engaging in the conduct described herein, Defendants acted with malice, oppression, and/or fraud, entitling Paul to exemplary and punitive damages.

VIII.
FIFTH CAUSE OF ACTION

Breach of Fiduciary Duty And / Or Confidential Relationship
[Against All Defendants]

50. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 49 of this Complaint as if fully set forth herein.

51. By holding Father Cruz out as a qualified priest and a person of stature and integrity within the Catholic Archdiocese, Defendants Agana Archdiocese and DOES 6 - 50, together with Father Cruz himself, invited, counseled, encouraged and induced the Catholic community of Guam, including parents or guardians of children, and particularly parents or guardians of children serving as altar boys and children eligible to serve as altar boys, to have trust and confidence in the Agana Archdiocese and its priests and to entrust their children to the company of priests and specifically to Father Cruz, including allowing their children to be alone with Father Cruz without supervision, at a church facility where Father Cruz resided. Through such actions, Defendants collectively created and entered into a fiduciary and / or confidential relationship with its parishioners, including Catholic parents or guardians and their children, and in particular, children who provided services to the Agana Archdiocese that included serving as altar boys. Accordingly, Defendants collectively created and entered into a fiduciary and / or confidential relationship specifically with the minor child Paul.

52. Through such fiduciary and / or confidential relationship, Defendants collectively caused parents or guardians to entrust their children to priests, and specifically to Father Cruz, including the parents of Paul, which resulted in Paul serving as an altar boy at a church facility where Father Cruz resided, resulting in the subject acts of sexual abuse described herein.

53. Defendants collectively breached their fiduciary and / or confidential relationship with the minor child Paul by violating the trust and confidence placed in them by parishioners and specifically by the minor child Paul, and by engaging in the wrongful acts described in this Complaint.

54. As a direct and proximate result of the Defendants' above – described conduct, Paul has suffered, and continues to suffer, great pain of mind and body, shock, emotional distress, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, and loss of enjoyment of life; and have incurred and / or will continue to incur expenses for medical and psychological treatment, therapy and counseling.

55. By engaging in the conduct described herein, Defendants acted with malice, oppression, and/or fraud, entitling Paul to exemplary and punitive damages.

IX.
REQUEST FOR RELIEF

WHEREFORE, Plaintiff Paul Joseph Borja requests judgment against all Defendants on all counts as follows:

1. For all general damages, in a sum to be proven at trial;
2. For all special damages, in a sum to be proven at trial;
3. For exemplary and punitive damages as allowed by law and in a sum to be proven at trial;
4. For costs and fees incurred herein;
5. Attorneys' fees, as permitted by law; and
6. For other such and further relief as the Court may deem just and proper.

X.
DEMAND FOR JURY TRIAL

Plaintiff Paul Joseph Borja, through his counsel, David J. Lujan, hereby demands a jury trial of six (6) in the above-entitled action.

The amount in controversy between the parties herein exceeds the amount of Twenty-Five Dollars ($25.00).

DATED: November 23, 2016

Respectfully Submitted,

DAVID J. LUJAN,
Attorney for Plaintiff,
Paul Borja

VERIFICATION

PAUL JOSEPH BORJA, declares and states that he is the PLAINTIFF in the foregoing COMPLAINT; that he has read said VERIFIED COMPLAINT FOR DAMAGES and knows the contents thereof to be true and correct, except as to the matters which may have been stated upon her information and belief; and as to those matters, he believes them to be true.

I declare, under penalty of perjury, this 23 day of Nov, 2016, that the foregoing is true and correct to the best of my knowledge.

Paul J. Borja
PAUL JOSEPH BORJA