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6 STATE BAR NO. 00138600
7 FRANK VERDERAME, ESQ.
8 STATE BAR NO. 007519
9 ATTORNEY FOR PLAINTIFFS

FILED
JAN 27 2005
MICHAEL K. JEANES, Clerk;
By **J. CALHOON**
Deputy

PAID
474775

10 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
11 IN AND FOR THE COUNTY OF MARICOPA

12 [REDACTED] an unmarried man,
13)
14) Plaintiff,
15)
16) v.
17)
18) THE ROMAN CATHOLIC CHURCH OF
19) THE DIOCESE OF PHOENIX, INC., an
20) Arizona corporation, ST. TIMOTHY'S
21) CATHOLIC CHURCH, an entity of unknown
22) legal organization; BISHOP THOMAS J.
23) OLMSTED, a corporation sole; LIFE TEEN,
24) INC, an Arizona corporation; BISHOP
25) THOMAS J. O'BRIEN; MARK LEHMAN;
26) DALE FUSHEK; and PHIL BANIEWICZ,
27)
28) Defendants.

No. CV2005-001652

COMPLAINT
(Negligence, Intentional Tort)

29 Plaintiff, by and through his attorney, in complaint against the Defendants, and each of
30 them, states as follows:

I.

31 The Plaintiff is a resident of Maricopa County, Arizona.

II.

32 At all times relevant hereto, Defendants Mark Lehman, Dale Fushek and Phil Baniewicz
33 were residents of Maricopa County, Arizona and caused events to occur out of which this

1 | Complaint arises.

2 |

III.

3 |

Defendant The Roman Catholic Church of the Diocese of Phoenix, Inc. ("the Diocese")
4 | is authorized to conduct business and conducts business in Maricopa County and caused an
5 | event to occur in Maricopa County, out of which the allegations of this Complaint arise and is
6 | the employer of Defendants, Fushek, Lehman and Baniewicz.

7 |

IV.

8 |

Defendant Bishop Thomas J. Olmsted is the current Bishop of the Catholic Diocese of
9 | Phoenix, he is a corporation sole for the Roman Catholic Diocese of Phoenix, and along with
10 | the Diocese . The former Bishop, Thomas J. O'Brien was a corporation sole for the Roman
11 | Catholic Diocese of Phoenix and was the employer of the Defendants, Fushek, Lehman and
12 | Baniewicz at the time of the events in question.

13 |

V.

14 |

Defendant St. Timothy's Catholic Church ("St. Timothy's"), an entity of unknown legal
15 | standing, is a part of the Diocese of Phoenix, and is authorized to conduct business and
16 | conducts business in Maricopa County, Arizona.

17 |

VI.

18 |

Defendant Mark Lehman ("Lehman") was an employee of Defendants St. Timothy's and
19 | the Diocese and at all times pertinent hereto, said Defendants supervised Lehman as their
20 | agent/employee. Defendants St. Timothy's, the Diocese and Olmsted are responsible for the
21 | conduct of Defendant Lehman under the doctrine of respondeat superior.

22 |

VII.

23 |

Defendant Dale Fushek ("Fushek") is an employee of Defendants St. Timothy's and The
24 | Diocese and at all times pertinent hereto, said Defendants supervised Fushek as their
25 | agent/employee. Defendants St. Timothy's, the Diocese, and Olmsted are responsible for the

26 |

1 | conduct of Defendant Fushek under the doctrine of respondeat superior.

2 | VIII.

3 | Defendant Phil Baniewicz ("Baniewicz") was an employee of Defendants St. Timothy's
4 | and The Diocese and at all times pertinent hereto, said Defendants supervised Baniewicz as
5 | their agent/employee. Defendants St. Timothy's, the Diocese and Olmsted are responsible for
6 | the conduct of Defendant Baniewicz under the doctrine of respondeat superior.

7 | IX.

8 | Defendant Life Teen, Inc. is an incorporated entity in the State of Arizona which
9 | operates a Christian youth program for teen aged children. Defendants Fushek and Baniewicz
10 | are founders of that program and serve as the CEO and President of that organization.

11 | X.

12 | In 1985, Plaintiff was sexually abused by Defendant Lehman on multiple occasions. On
13 | one occasion, Defendant Fushek watched and masturbated as the sexual abuse of Plaintiff
14 | took place. Defendant Fushek knew of the sexual abuse of Plaintiff and did nothing to stop or
15 | prevent it; nor did Defendant Fushek report the sexual abuse to authorities. Instead, he
16 | participated in the abuse by providing the Plaintiff, a minor at the time, with alcohol, and
17 | allowed Plaintiff to be sexually abused without trying to stop it. Plaintiff was sexually abused
18 | by Defendant Lehman on several occasions and Defendant Fushek was aware of this sexual
19 | abuse. Defendants Lehman, Baniewicz and Fushek, threatened Plaintiff and used their
20 | position of power in St. Timothy's and The Diocese to keep Plaintiff "quiet", so that he would
21 | not report the abuse to his parents. Plaintiff was a minor when these events occurred.
22 | Additionally, Plaintiff was sexually abused by Defendant Baniewicz on more than one occasion.

23 | XI.

24 | During the first week of February 2003, on or about February 6, 2003, while he was in
25 | counseling arranged for at St. Anne's parish in Gilbert, Arizona, Plaintiff's counselor

26 |

1 discovered that the Plaintiff had suffered from dissociative amnesia. That is, Plaintiff did not
2 have recall for the events described above for the years that passed from 1985 until the events
3 of February 6, 2003 which triggered a recall of events that are described above. Therefore,
4 the plaintiff was of "unsound mind" during that period of time and the statute of limitations is
5 tolled and did not commence until February 6, 2003.

6 XII.

7 Further, as described above, the defendants fraudulently concealed their knowledge of
8 the misconduct involving the Plaintiff and should be estopped to raise the statute of limitations
9 as a defense.

10 XIII.

11 Defendants acted negligently, intentionally, willfully and recklessly, subjecting them to
12 general and punitive damages. Defendants Fushek, Bishop O'Brien and the Diocese, St.
13 Timothy's, and Life Teen, Inc. had the responsibility to report this abuse to the authorities and
14 failed to do so. Instead, they kept the matter secret from public disclosure as they did with
15 other reports of sexual misconduct that occurred at St. Timothy's parish.

16 **FIRST CLAIM FOR RELIEF**
17 **(Negligent Supervision and Hiring)**

18 XIV.

19 The Diocese, the corporation sole, St. Timothy's, Life Teen, Inc., Father Fushek and
20 Bishop O'Brien failed to act as reasonable persons by failing to identify Mark Lehman as a
21 person with aberrant sexual propensities and in failing to prevent Lehman and Fushek from
22 being alone with children. These defendants also knew or should have known of Lehman's
23 dangerous sexual propensities.

24 XV.

25 It was reasonably foreseeable that men with Lehman's and Fushek's psychological
26 makeup and personal history could or would commit the acts described herein, yet placed

1 Lehman and Fushek in a position which allowed them to be alone with, counsel and develop
2 relationships with young boys.

3 XVI.

4 Defendant's negligently hired and retained Lehman and Fushek, failed to adequately
5 supervise them and placed them in a position where there was an unreasonable risk that they
6 would molest children.

7 XVII.

8 When these defendants learned of Lehman's molestation of other children, and
9 Fushek's inappropriate sexual conduct, they negligently failed to take reasonable steps to
10 admit the wrongful conduct of Lehman and Fushek, failed to investigate the true extent of his
11 wrongful activities and failed to advise Plaintiff, his parents and the police of the damage done;
12 instead, they took steps to affirmatively mislead Plaintiff, his parents and the public about the
13 nature and extent of Lehman and Fushek's activities and thereby aggravated the damages
14 suffered by the Plaintiff.

15 XVIII.

16 As a direct and proximate result of these Defendants' negligent retention and
17 supervision of Defendants Lehman, Fushek and Baniewicz, Plaintiff has suffered severe harm
18 entitling him to special and general damages, in an amount to be determined by the jury. The
19 harm includes both economic and non-economic losses.

20 **SECOND CLAIM FOR RELIEF**

21 **(Battery by Mark Lehman and Phil Baniewicz)**

22 XIX.

23 Defendants Lehman and Baniewicz, as described above, inappropriately and against
24 the wishes of the Plaintiff, touched, assaulted and injured the plaintiff.

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XX.

As such, these Defendants did commit the tort of battery upon the plaintiff and are liable for monetary damages.

THIRD CLAIM FOR RELIEF

(Fault of Defendants Mark Lehman, Dale Fushek and Phil Baniewicz)

XXI.

Defendants Lehman, Fushek and Baniewicz, as employees of the remaining defendants, had a duty to adhere to the standard of care of Catholic priests and spiritual advisers similarly situated in the community, which included but was not limited to act as a spiritual adviser, leader, counselor and teacher of the children at St. Timothy's parish, including the Plaintiff.

XXII.

These Defendants negligently and carelessly breached their duty of care to Plaintiff as described by sexually molesting minor children in their care, including Plaintiff. In addition, these defendants breached their duty of care by creating a social culture which inappropriately focused upon sexual activity, masturbation and other acts. This culture fostered an environment that led to a pattern of inappropriate sexual behavior at St. Timothy's parish and within the Life Teen program.

XXIII.

As a direct and proximate result of these defendants fault, Plaintiff has suffered harm, entitling Plaintiff to recover special, general damages, and punitive damages.

FOURTH CLAIM FOR RELIEF

(Fiduciary Duty)

XXIV.

All of the Defendants owed breached fiduciary duties to the Plaintiff because of the

1 high degree of trust and confidence which the Plaintiff and his parents placed in Defendant
2 Fushek as an ordained priest, Defendant Lehman as a seminarian and priest, and
3 Defendant Baniewicz as a Life Teen minister.

4 XXV.

5 By virtue of the conduct described above, the Defendants and each of them,
6 breached their fiduciary duties to the Plaintiff.

7 XXVI.

8 As a result of the breaches of fiduciary duty, Plaintiff was harmed and suffered
9 damages as described below.

10 **FIFTH CLAIM FOR RELIEF**

11 **(Breach of Non-Delegable Duty by all Defendants)**

12 XXVII.

13 Defendants, and each of them, owed a non-delegable duty of reasonable care to
14 protect from harm the minor Plaintiff while he was a parishioner and participant at St.
15 Timothy's and in the Life Teen program, while under the Defendants' care.

16 XXVIII.

17 Defendants breached said duty when the molestation of plaintiff occurred and by
18 failing to adequately supervise Defendants Lehman, Fushek and Baniewicz as to prevent
19 said molestation.

20 XXIX.

21 Said duty to protect Plaintiff, as a minor child, was non-delegable, and, as such,
22 Defendants, and each of them, are jointly and severally liable for the injuries suffered by
23 Plaintiff.

24 ///

25 ///


26

- 1 2. Special damages in an amount to be proven at trial;
- 2 3. Punitive damages in an amount appropriate to punish Defendants and to
- 3 deter such conduct in the future;
- 4 4. Plaintiff's costs and reasonable attorneys' fees incurred herein;
- 5 5. For interest on said judgment at the highest legal rate; and
- 6 6. For such other and further relief as the Court deems fair and appropriate.

7 Plaintiff hereby requests a jury trial of this action.

8 Dated this 27th day of January, 2005.

PLATTNER VERDERAME, P.C.



Frank Verderame, Esq.
Attorney for Plaintiffs

13 ORIGINAL filed with the Court
14 this 27th day of January, 2005 and
15 a COPY of the foregoing
16 delivered this same day
17 to:

18 Court Administration
19 201 West Jefferson
20 Phoenix, AZ 85003

21 By Wendy M. Fig
22
23
24
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MICHAEL K. JEANES, CLERK
BY M. J. J. DEP
FILED

2006 DEC 20 PM 5: 23

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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 [REDACTED], an unmarried man,

10 Plaintiff,

11 vs.

12 THE ROMAN CATHOLIC CHURCH OF THE
13 DIOCESE OF PHOENIX, INC., an Arizona
corporation, ST. TIMOTHY'S CATHOLIC
14 CHURCH, an entity unknown legal organization;
BISHOP THOMAS J. OLMSTED, a corporation
15 sole; LIFE TEEN, INC., an Arizona corporation;
BISHOP THOMAS J. O'BRIEN; MARK
16 LEHMAN; DALE FUSHEK; and PHIL
BANIEWICZ,

17 Defendants.

CASE NO. CV2005-001652

NOTICE OF SETTLEMENT

(Assigned to The Honorable Paul A.
Katz)

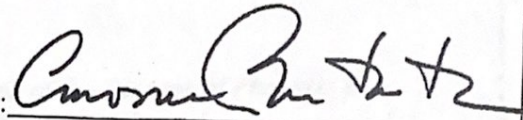
18 Pursuant to Rule 5.1(c) *Arizona Rules of Civil Procedure*, the Court is hereby advised
19 that the parties have reached a settlement in this matter, and they request that the Final
20 Pretrial Conference scheduled for September 10, 2007, and the Trial scheduled for
21

1 September 18, 2007, be vacated. A Stipulation for Dismissal with Prejudice has been filed
2 with the Court.

3 Dated this 20th day of December, 2006.

4 SHUGHART THOMSON & KILROY, P.C.

6 By:



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8 Lori V. Berke, Esq.

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14 *Phoenix/St. Timothy's Parrish, Bishop*

15 *Thomas J. O'Brien, and Bishop Thomas J.*

16 *Olmsted*

CS
10-1

MICHAEL K. JEANES, CLERK
BY C. Rechner DEP
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2006 DEC 19 PM 3:48

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7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

8 **IN AND FOR THE COUNTY OF MARICOPA**

9 [REDACTED], an unmarried man,
10
11 Plaintiff,

CASE NO. CV2005-001652

12 vs.

**ORDER GRANTING JOINT
STIPULATION FOR DISMISSAL
WITH PREJUDICE**

13 THE ROMAN CATHOLIC CHURCH OF THE
DIOCESE OF PHOENIX, INC., an Arizona
corporation, ST. TIMOTHY'S CATHOLIC
14 CHURCH, an entity unknown legal organization;
BISHOP THOMAS J. OLMSTED, a corporation
15 sole; LIFE TEEN, INC., an Arizona corporation;
BISHOP THOMAS J. O'BRIEN; MARK
16 LEHMAN; DALE FUSHEK; and PHIL
BANIEWICZ,

(Assigned to The Honorable Paul A.
Katz)

17 Defendants.

18
19 Upon consideration of the Joint Stipulation to Dismiss with Prejudice and good cause
20 appearing,

21 ...

22 ...

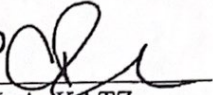
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IT IS HEREBY ORDERED that this case is dismissed with prejudice as to all claims against all Defendants; each party to bear their own costs and fees.

Dated this DEC 19 2006 day of December, 2006.

C. RICHARD 
~~THE HONORABLE PAUL A. KATZ~~
JUDGE OF THE MARICOPA COUNTY
SUPERIOR COURT