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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: THE ROMAN CATHOLIC BISHOP OF OAKLAND, Debtor in Possession.	Chapter 11 Case No. 23-40523-WJL
The Roman Catholic Bishop of Oakland, Plaintiff, v. Pacific Indemnity et al. Defendants.	Adv. Pro. No. 23-04028 WJL **NOTICE OF MOTION AND MOTION TO DISMISS THIRD AMENDED COMPLAINT** Objections: March 13, 2024 Hearing Date: March 27, 2024 Judge: Hon. William J. Lafferty, III Time: 10:30 a.m. Place: Courtroom 220 1300 Clay Street Oakland, CA 94612

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Pacific Indemnity Company, Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America, Pacific Employers Insurance Company, and Westchester Fire Insurance Company (collectively, "Moving Insurers"), defendants in the above-captioned adversary proceeding, respectfully move to dismiss the Third Amended Complaint (Dkt. No. 163) pursuant to Fed. R. Civ. P. 12(b)(6), made applicable under Bankruptcy Rule 7012.

As set forth in the accompanying Memorandum of Points and Authorities, there is good cause for the relief requested herein. This motion (the "Motion") is made on the grounds that the Third Amended Complaint fails to state a claim against the Moving Insurers. The Motion is based on this Notice of Motion and Motion, the Memorandum of Points and Authorities, the Request for Judicial Notice, the pleadings and other documents that may be filed by the Moving Insurers in connection with this action, and such other and further matters and argument as may be offered at or in connection with the hearing on this Motion.

Dated: January 26, 2024

By: */s/ Karen Rinehart*

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The Roman Catholic Bishop of Oakland, Plaintiff, v. Pacific Indemnity et al. Defendants.	Adv. Pro. No. 23-04028 WJL **MEMORANDUM IN SUPPORT OF MOTION TO DISMISS THIRD AMENDED COMPLAINT** Objections Due: March 13, 2024 Date: March 27, 2024 Judge: Hon. William J. Lafferty, III Time: 10:30 a.m. Place: Courtroom 220 1300 Clay Street Oakland, CA 94612

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Pacific Indemnity Company ("Pacific Indemnity), Pacific Employers Insurance Company ("Pacific Employers"), Century Indemnity Company, as successor to CCI Insurance Company, as successor to Insurance Company of North America ("INA"), and Westchester Fire Insurance Company ("Westchester," collectively, "Moving Insurers"), defendants in the above-captioned adversary proceeding, submit this memorandum of law in support of their motion, pursuant to Federal Rules of Civil Procedure 8, 12(b)(6) and Bankruptcy Rule 7012, to dismiss the Third Amended Complaint (Dkt. No. 163, "TAC") in the above-captioned adversary proceeding (the "Adversary Proceeding" or the "Coverage Action") for failure to state a claim.[1]

PRELIMINARY STATEMENT

Despite a lengthy hearing in which the Court articulated what—at a minimum—the Roman Catholic Bishop of Oakland, a corporation sole (a/k/a Diocese of Oakland) (the "Diocese") needed to do to plausibly allege a breach of contract or declaratory judgment action against the Moving Insurers, the TAC fails to do so.

The reason for the Diocese's failure to plead a claim for breach is not a mere technicality. The bankruptcy was filed before the underlying abuse cases advanced to a state where there was even the possibility of verdicts against the Diocese. There can be no breach of contract for indemnity where, as here, the Diocese does not and cannot allege that there were judgements or settlements that have gone unsatisfied. With regard to defense, the TAC confirms that the Moving Insurers issued letters agreeing to defend the claims tendered pre-petition, subject to a reservation of rights—where the alleged abuse fell within their respective policy periods—and that the Moving Insurers negotiated, and entered into a rate agreement with the Diocese for defense costs and paid the bills that were tendered. And, while it took time to work through the

[1] This filing does not constitute a waiver of the Moving Insurers right to have any and all final orders in any and all non-core matters entered only after de novo review by a Federal district court (or, as applicable, appellate court) and/or the Moving Insurers' right to trial by jury in any proceeding as to any and all matters so triable, whether or not the same be designated legal or private rights, or in any case or controversy or proceeding related thereto, and whether such jury trial is pursuant to statute or the United States Constitution. Pursuant to United States Bankruptcy Court, Northern District of California Local Bankruptcy Rule 7012-1, the Moving Insurers hereby represent that they does not consent to the entry of a final order or judgment by the Bankruptcy Court.

large number of complaints that were only received after the bankruptcy, the Moving Insurers have responded to the Diocese on all of the complaints alleging abuse during their respective policy periods by agreeing to defend under a reservation of rights as provided for by California law. Simply put, the Moving Insurers did not breach their contracts with the Diocese.

This motion addresses three deficiencies that reflect this reality and require dismissal of all or part of the newly amended complaint.

First, all the claims must fail because, as the Court explained, to plausibly claim a breach of the duty to defend, the Diocese needed to provide the dates it tendered the claims ***to the insurers***. The Diocese has not done that, instead providing the dates that it allegedly provided the claims to its own broker. This is plainly insufficient, as it is black letter law in California that the tender of a claim to a broker is ineffective to provide notice to an insurer because a broker is not an agent of the insurer. *Oliver v. Coregis Ins. Co.*, 41 Fed. App'x 101, 102 (9th Cir. 2002) (tender of claim to insurance broker did not provide notice to insurer). For this reason alone, the TAC fails to state a claim and must be dismissed.

Second, while the Diocese advances four breach of contract theories—(1) acceptance of coverage subject to a reservation of rights, (2) failure to respond, (3) failure to pay full lawyer rates, and (4) denial of coverage—none of these are actionable as to the Moving Insurers. The Diocese's claims cannot be sustained based on the issuance of a reservation of rights letter, because, as the court explained in *Haskins v. Employers Insurance of Wausau*, when an insurer "agrees[s] to defend a suit subject to a reservation of rights," it thereby "meets its obligation to furnish a defense without waiving its right to assert coverage defenses against the insured at a later time." 126 F. Supp. 3d 1117, 1125 (N.D. Cal. 2015).

With respect to an allegation that the Moving Insurers failed to confirm coverage, the Diocese cannot sue on this basis. The Diocese failed to identify those claims with any specificity in the TAC and it's Exhibit A. And the only claims that this allegation apparently relates to—those on Exhibit A that have entries in the "AJG Tendered to" column noting the date the claim

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was allegedly tendered to "Chubb"[2] but do not show a response from "Chubb" in the "Insurer Response column"—either concern allegations of abuse that the claimant alleges occurred *outside* of the Moving Insurers' respective coverage periods and/or are alleged to have been given to its broker *after* the automatic stay went into effect. The Moving Insurers have issued letters agreeing to defend complaints within their respective policy periods that were tendered after the bankruptcy filing, subject to a reservation of rights. These post-bankruptcy tendered suits have been responded to in a timely manner as all the underlying lawsuits are stayed. In any event, the Supreme Court of California has determined that only the Insurance Commissioner has the authority to bring a private cause of action regarding purported delay in responding to an insurance claim. *Moradi-Shalal v. Fireman's Fund Ins. Cos.*, 46 Cal. 3d 287, 304-305 (1988).

And with respect to the defense rates, that argument is quickly disposed of, as there is nothing wrong with an insurer agreeing with its policyholder over the defense fees, which is what the Diocese claims happened here. *See* Control defense, 14A Couch on Ins. ("Generally, an insurer that agrees to defend and indemnify an insured in a lawsuit maintains the right to control the defense of the insured"). As the TAC concedes, the Diocese entered into a rate agreement. Further, any contested issue concerning the amount of attorney fees allegedly owed by the insurer for an insured's independent counsel are subject to mandatory arbitration under Cal. Civ. Code § 2860(c), which provides that "[a]ny dispute concerning attorney's fees not resolved by these methods shall be resolved by final and binding arbitration by a single neutral arbitrator selected by the parties to the dispute." *See also Compulink Management Center, Inc. v. St. Paul Fire & Marine Ins. Co.*, 169 Cal. App. 4th 289 (2008).

In addition, the Diocese's claim that the Moving Insurers denied properly tendered claims fails on its face. The purportedly improper denials were for claims of abuse that fall outside of the Moving Insurers policy periods, as is evident from the face of the TAC.

[2] "Chubb" is not a party to this action, and makes no representation as to if or when such claims were received by Pacific Indemnity, INA, Pacific Employers, or Westchester. The Diocese's failure to identify the specific insurers at issue in Exhibit A adds yet another level of vagueness to the TAC rendering its allegations unintelligible.

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Third, the Diocese fails to state a claim for breach of contract or declaratory relief with regard to excess and umbrella insurance because it does not plausibly allege exhaustion of the underlying insurance, a condition precedent to excess coverage. Instead, the Diocese just offers the conclusory allegation that there is a "substantial likelihood" of damages being in excess of the underlying coverage. That is plainly insufficient to make out a claim against the excess and umbrella coverage though, as the Diocese identifies no settlement or judgment and says nothing about a single claim, let alone the liability that it is facing. Although the Court did not require the Diocese to plead exhaustion "to the penny," the Diocese has not plead any factual basis whatsoever to establish exhaustion of primary coverage. *See* Declaration of Justine M. Daniels In Support of Motion to Dismiss ("Daniels Declaration") Ex. 1, Dkt. No. 158 ("Nov. 14, 2023 Tr.") at 64:8-22.

The Diocese of Oakland's two sister dioceses, the Diocese of Santa Rosa and Archdiocese of San Francisco, did not initiate breach of contract actions against their insurers. Allowing an action for breach of contract that is not well founded to go forward will be a tremendous distraction and inordinately expensive when everyone's time ought to be focused on formulating a plan.

For these reasons and those discussed in more detail below, the Diocese's Third Amended Complaint must be dismissed and/or this case stayed.

FACTUAL BACKGROUND

On June 22, 2023, the Diocese initiated this adversary proceeding and filed a first amended complaint ("FAC") on June 26, 2023, against 13 defendants. Dkt. Nos. 1, 2. On August 31, 2023, Moving Insurers moved to dismiss the FAC or, in the alternative, to require a more definite statement. The Moving Insurers explained that the FAC was deficient in multiple respects and thus failed to plausibly state a claim for breach of contract or declaratory relief. DKt. No. 74.

Nov. 14, 2023, Decision Dismissing First Complaint

On November 14, 2023, the Court held a hearing and granted the Moving Insurer's motion. Explaining its decision, the Court recognized that a complaint is a "much more

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particularized form of request for relief, and it needs to be precise in its allegations and assertions of duties and breaches." Nov. 14, 2023 Tr. at 60:4-7. The Court provided the following guidance to the Diocese for amending its allegations:

> [1] to the extent that the plaintiff believes that the obligation to indemnify has been triggered, the plaintiff should clarify the reasons why it believes that's the case.
>
> [2] to the extent the plaintiff believes that the duty to defend has been breached, the plaintiff should provide further details concerning the instances of the alleged breach, including but not necessarily limited to, one, ***the dates the plaintiff tendered the claims to the insurers***, two, the dates of the . . . insurers' responses, if any, and
>
> [3] the reasons why the plaintiff asserts that the insurers' responses, if there was a response, were unsatisfactory or deficient under California law. I think we have to have that to understand that we have a breach or don't have a breach.

Id. at 60:10-23 (emphasis added). The Court made clear that the instructions provided were not a comprehensive list of the actions necessary to remedy the deficiencies of the complaint, but instead that the Diocese was required to "clarify at least [these] points." *Id.* at 60:8-9.

With regard to excess or umbrella coverage, the Court explained that Ninth Circuit authority stood for the proposition that, on a breach of contract claim, "primary insurance must be exhausted before liability attaches under a secondary policy." *Id.* at 62:16-18. On a declaratory relief claim, the Court stated that "there is greater flexibility under California law." *Id.* at 63:5-8. But the Court held that even the Diocese's declaratory relief claim failed to state a claim with regard to excess or umbrella coverage because it had not "alleged anything with respect to any kind of likelihood that there's going to be a likely invasion of the excess policies." *Id.* at 64:3-6. The Court recognized that, with respect to declaratory relief, while "we may have ideas what numbers are likely to be based on other cases . . . we just don't know" and the Diocese is required to plausibly plead "that there's going to be a likely invasion of the excess policies." *Id.* at 64:1-6. This requires pleading that there is a "reasonable possibility or reasonable plausibility" that the excess policies will be triggered although this does not "necessarily [need to be] down to the penny." *Id.* at 64:11-13.

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Second Amended Complaint

On December 18, 2023, the Diocese filed a second amended complaint ("SAC"), asserting claims for breach of contract and declaratory relief against the Moving Insurers.[3] The Diocese tacitly acknowledged that the SAC was deficient and chose to amend before any responses were filed.

The Third Amended Complaint

On January 12, 2024, the Diocese filed the TAC. The TAC is substantially similar to the SAC, except that it added names of certain defendants and updates to Exhibit A, a chart purportedly reflecting tender letters that the Diocese received in or around the last month.

As pled in the TAC, the Moving Insurers are alleged to have issued the following policies to the Diocese:

Insurer	Policy Type	Policy #	Coverage Years	TAC ¶
Pacific Indemnity	Primary	LAC127792 LAC 155598	Mar. 12, 1962 to Oct. 25, 1963Oct. 25, 1963 to Oct. 25, 1966	TAC ¶ 7
INA	Excess	XBC 24312	Oct. 25, 1966 to Oct. 25, 1970	TAC ¶ 11
Alleged Westchester	Excess	JU 8312510	Dec. 1, 1980 to Dec. 1, 1981	TAC ¶ 15
Pacific Employers	Umbrella	XCC 012405	Mar. 13, 1985 to Dec. 1, 1985	TAC ¶ 20

In the TAC, the Diocese still does not identify when any claims were tendered to the Moving Insurers, and instead only specifies when it allegedly made claims to its broker. TAC ¶ 28; *see also* Ex. A. With respect to the excess and umbrella insurance policies, the Diocese offers only the conclusory assertion that it is facing lawsuits for which there is a "substantial likelihood

[3] Dkt. No. 161.

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of being in excess of the available limits of insurance available under the" underlying policies. TAC ¶¶ 30, 31.

In support of their pleading for breach of contract and declaratory relief, the Diocese fails to identify any settlement or judgment that has occurred or gone unpaid, and thus does not establish an essential element for a breach of contract claim for indemnity. With respect to defense, the Diocese likewise fails to allege that any defense bill that was tendered has gone unpaid, let alone identify any unpaid bills.[4]

In the absence of an allegation that any defense bill was left unpaid, the Diocese resorts to alleging that, to the extent insurers issued reservation of rights letters, they "have not actually provided the benefits of the respective policies." TAC ¶¶ 40-42, 47. The Diocese also alleges that its insurers are "fail[ing] to confirm coverage." TAC ¶¶ 29-31; 40-42. But the Diocese fails to identify tenders subject to this allegation with any specificity. Finally, the Diocese alleges that the insurers received tenders but "improperly denied" coverage, TAC ¶¶ 40-42, 47; but, as discussed below, the complaints identified in Exhibit A to the TAC that are apparently the subject of this charge allege abuse that occurred outside the Moving Insurers' policy periods as alleged by the Diocese.

LEGAL STANDARD

"A motion to dismiss in an adversary bankruptcy proceeding is governed by Federal Rule of Bankruptcy Procedure 7012(b), which incorporates Federal Rule of Civil Procedure 12(b)-((i)." *In re Tracht Gut, LLC*, 836 F. 3d 1146, 1150 (9th Cir. 2016). Under Rule 12(b)(6), "a court must dismiss a complaint if it fails to state a claim upon which relief can be granted." *In re Bower*, 644 B.R. 187, 191-92 (Bankr. N.D. Cal. 2022).

[4] Pacific sought the Court's guidance on whether a comfort order was required to pay the defense bills that were in process when the automatic stay went into effect and then filed a status report stating they had been paid without any subsequent complaint by the Diocese. Dkt. No. 474 at 3 ("At the case conference in August, Pacific Indemnity and INA reported that certain bills for defense costs in the underlying case were in transit when the bankruptcy petition was filed and were held because of the automatic stay. After advising the Court that Pacific Indemnity and INA had met and conferred with Debtor's counsel about paying these bills, payment was issued in August / September in accord with a defense cost agreement put in place with the Debtor prepetition. We are not aware of any other outstanding defense costs invoices but if there are any that have somehow been missed have asked Debtor's counsel to provide them.").

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To survive dismissal, a plaintiff must allege "sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *In re Harris*, 2012 WL 5986534, at *4 (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell Atlantic v Twombly*, 550 U.S. 544, 555 (2007))). The *Twombly/Iqbal* standard requires a plaintiff to do more than provide a "formulaic recitation of the elements of a cause of action" or offer "naked assertions devoid of further factual enhancement." *Id.* (citations and internal quotation marks omitted). A complaint that fails to provide adequate factual detail must be dismissed. *See, e.g.*, *In re Theos Fedro Holdings, LLC*, No. 21-ap-03023, 2022 WL 10685907, at *4 (Bankr. N.D. Cal. Oct. 18, 2022) (dismissing complaint for failing to satisfy *Twombly/Iqbal* standard).

ARGUMENT

A. The TAC Should be Dismissed Because the Diocese Fails to Identify When Any Claim Was Tendered to the Moving Insurers.

The Diocese failed to follow the Court's instruction that any amended complaint provide "the dates the [Diocese] tendered the claims ***to the insurers***." Nov. 14, 2023 Tr. at 60:10-23 (emphasis added). The TAC fails to satisfy this basic requirement because the Diocese only specifies when it tendered the claims to its broker—"AJG"—and not when tender was made to the insurers, if it was made at all. TAC ¶ 28; *see also* Ex. A. It is black letter law in California that the tender of a claim to a broker is ineffective to provide notice to an insurer because a broker is not an agent of the insurer. *See* West's Ann. Cal. Ins. Code § 33 (2002) (an "insurance broker" does not act "on behalf of . . . an insurer"); 13 Couch on Ins. § 187:75 ("[a]n insurance broker generally is considered to be the agent of the insured and not the insurance company" and "[n]otice to a broker is ineffective as to the insurer where the broker is the insured's agent"); *Oliver*, 41 Fed. App'x at 102 (same).

The Diocese's allegations in the TAC and accompanying exhibit identify when it alleges claims were tendered to its broker, AJG, but that is immaterial to the issue of if and when they were tendered to the insurers. Moreover, the Diocese provides no factual basis for concluding that AJG was an agent of the insurers. And no such conclusion can be reasonably inferred because the opposite is the case under California law: an insurance broker acts on behalf of the insured, and notice to the broker does not effectuate notice to an insurer. *Oliver*, 41 Fed. App'x at

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102 n.1 (collecting cases and other legal authorities holding that notice to an insurance broker does not provide notice to an insurer). The Diocese's claims should all be dismissed for failure to plausibly allege that the Diocese gave timely notice of any claim to its insurers. At the very least, the Diocese must be ordered to provide sufficient detail for the Moving Insurers to respond.

B. The Diocese Fails to State Any Viable Breach of Contract Claim Against the Moving Insurers.

The Diocese's breach of contract claim also fails as a matter of law and/or on the face of the TAC. The Diocese claims that the insurers, to the extent they issued reservation of rights letters, "have not actually provided the benefits of the respective policies." TAC ¶¶ 40-42, 47. The Diocese also alleges that the insurers "refus[ed] to pay full defense rates or requir[ed] an agreement to a reduction of rates for defense." TAC ¶ 29. It further alleges that insurers "failed to confirm coverage." TAC ¶¶ 29-31; 40-42. Finally, the Diocese alleges that the insurers received tenders but "improperly denied" coverage. TAC ¶¶ 40-42, 47.

As detailed below, none of these allegations provides the basis for any cause of action against the Moving Insurers. Moreover, the Diocese's failure to explain how this purported conduct supports any legal cause of action contravenes the Court's directive that the Diocese be "precise in its allegations and assertions of duties and breaches." Nov. 14, 2023 Tr. at 60:4-7.

1. Issuing Reservation of Rights Cannot Constitute a Breach of Contract.

It is blackletter law in California that there can be no claim based on the fact that the Moving Insurers accepted coverage subject to a reservation of rights letter. *Haskins*, 126 F. Supp. 3d at 1125; *see also Progressive W. Ins. Co. v. Dallo*, 2008 WL 11337361, at *5 (S.D. Cal. Sept. 10, 2008) (rejecting insured's claim that insurer's "reservation of rights . . . is a breach of contract" because "[insurer] offered to provide a qualified defense under a reservation of right . . . [which] discharged their obligation to defend."). The allegation that the Moving Insurers "have not actually provided the benefits of the respective policies" makes no sense, as the Moving insurers would not have reserved their rights if they did not intend to defend in the first instance. Importantly, the Diocese does "not allege that the [policies at issue] prohibit a defense under a reservation of rights. *Id.* at *5.

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2. <u>There Is Claim for Allegedly Failing to Confirm Coverage.</u>

The Diocese's effort to sue insurers for "fail[ing] to confirm coverage," TAC ¶¶ 29-31; 40-42, also fails. But, as discussed below, Exhibit A to the TAC confirms that the Moving Insurers issued letters agreeing to defend under a reservation of rights all of the complaints alleging abuse within the policy periods of the primary policies alleged by the Diocese in the TAC. *See also, e.g.*, RJN Ex. 5, (Letter from Jennifer Capone to Eileen R. Ridley re: Reservation of Rights (Jan. 24, 2024).

Notably, the Diocese did not identify with any specificity in the TAC or it's Exhibit A claims that the Moving Insurers failed to confirm coverage. However, it appears that the Diocese is referring to allegedly tendered entries on Exhibit A where "Chubb" is noted as a recipient in the "AJG Tendered to" column and there is no response from "Chubb" noted in the in the "Insurer Response column." *See* Ex. A (Claimant Nos. 1 ('71-74), 44 ('73-74), 47 ('72-74), 132 ('76, '77, and/or '78), 133 ('81 and/or '82). These allegedly un-responded to tenders are for complaints that allege abuse falling outside of the Moving Insurer's coverage period and/or that the Diocese provided to its broker *after* the bankruptcy—when the automatic stay was in effect. *Compare id. with* TAC ¶ 7 (alleging Pacific Indemnity's primary policies cover Mar. 12, 1962-Oct. 25, 1963 and Oct. 25, 1963 to Oct. 25, 1966), ¶ 11 (alleging INA's excess policy covers Oct. 25, 1966-Oct. 25, 1970), ¶ 15 (alleging Westchester's excess policy covers Dec. 1, 1980 to Dec. 1, 1981), ¶ 20 (alleging Pacific Employers' umbrellas policy covers Mar. 13, 1985 to December 1, 1985). And, in fact, the Moving Insurers sent the Dioceses a response explaining that the complaints fell outside of the applicable coverage periods. *See* RJN Ex. 6, (Letter from Jennifer Capone to Eileen R. Ridley re: Declination (Jan. 24, 2024).[5]

Moreover, there can be no breach of the defense for a complaint provided to the Moving Insurers only after the automatic stay was in effect. The underlying cases were stayed. Exhibit A

[5] Claimant Nos. 132 and 133, merely refer to "Notice[s] of Claim" and there is no allegation in the TAC asserting that the Moving Insurers are under any obligation to respond to, let alone provide coverage for such claims. Further, Claimant No. 133, would—at best—be subject to the alleged Westchester excess policy. As discussed below in Section C, the Diocese has failed to allege that the primary polices have been exhausted and that claim is not ripe for defense.

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reflects that letters accepting the defense under a reservation of rights have been issued for all the complaints identified in the chart, which allege abuse that occurred during the Moving Insurers' respective coverage periods. There is no legally cognizable claim that complaints tendered after the automatic stay was in place—and while the underlying cases were stayed—were not timely addressed by the Moving Insurers.

In any event, California law prohibits an insurer from "[f]ailing to acknowledge and act reasonably promptly upon communications with respect to claims arising under insurance policies" or "[f]ailing to affirm or deny coverage of claims within a reasonable time after proof of loss requirements have been completed and submitted by the insured." Cal. Ins. Code § 790.03(h). But the Supreme Court of California has determined that only the Insurance Commissioner has the authority to enforce this law. *See Moradi-Shalal*, 46 Cal. 3d at 304-305 (1988) (only the Insurance Commissioner may enforce administrative sanctions for a violation of Section 790.03(h) because the legislature has not created a private right of action under this provision).[6]There is thus no legal basis upon which the Diocese can state a cause of action for failing to confirm insurance coverage.

3. <u>No Claim Exists for Entering Into a Agreement with a Policyholder on Defense Rates.</u>

The Diocese also fails to state a cause of action for breach of contract to the extent that it is based on an insurer "requiring an agreement to a reduction of rates," as there is nothing wrong with an insurer reaching an agreement with its policyholder over defense fees, which is what occurred here. *See Pac. Power & Light Co. v. Transp. Indem. Co*., 460 F.2d 959, 961 (9th Cir. 1972) (the duty to defend requires an insurer to pay "reasonable costs of defense"); § 4:19. *Costs and fees incurred in the duty to defend*, 1 Law and Prac. of Ins. Coverage Litig. (an insurer is generally only obligated to pay "reasonable fees and costs"); § 202:7 Control defense, 14A Couch on Ins. ("Generally, an insurer that agrees to defend and indemnify an insured in a lawsuit maintains the right to control the defense of the insured"); § 4:22 Conflict of interest between

[6] *See also Rattan v. United Services Auto. Ass'n*, 84 Cal. App. 4th 715, 724 (2000) (dismissing breach of contract claim due to purported delay in responding to insurance claim).

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insured and insurer—Satisfying duty to defend, 1 Insurance Claims and Disputes (6th ed.) ("[i]f the insured is allowed to select defense counsel, the insurer should be required to pay only the reasonable fees incurred").[7]

The California Civil Code expressly contemplates that when a policyholder opts to retain Cumis counsel, the setting of reasonable rates will be the subject of an agreement between insurer and policyholder and, if agreement is not reached, binding arbitration. Cal. Civ. Code § 2860(c). The Diocese points to no legal authority indicating that the insurers are obligated to pay defense rates at a higher amount than they have paid. *See generally* TAC.

4. <u>In Any Event, Disputes Related to Fee Amounts and Rates Are Subject to Mandatory Arbitration.</u>

While the Diocese cannot plead a claim based on its entry into a rate agreement, any contested issue concerning the amount of attorney fees allegedly owed by the insurer for an insured's independent counsel are subject to mandatory arbitration. Cal. Civ. Code § 2860(c). Courts have held that "[t]he language of the statute is clear. It requires arbitration of any and all Cumis fee disputes unless the parties' insurance policy provides for an alternative dispute resolution procedure." *Compulink Management Center, Inc. v. St. Paul Fire & Marine Ins. Co.*, 169 Cal. App. 4th 289, 296-297 (2008). In other words, the "California Legislature has spoken. It has decided that within the California courts these Cumis fee issues are to be decided in an arbitration forum, not the state's judicial forum." *Id.*

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[7] An insurance company is not obligated to pay defense counsel the rates the attorney may normally charges his or her clients. It is only obligated to pay "rates which are actually paid by the insurer to attorneys retained by it in the ordinary course of business in the defense of similar actions in the community where the claim arose or is being defended." Cal. Civ. Code § 2860(c). It may, of course, pay additional compensation. Or the insured may make up the difference. A carrier is obligated to pay for only "reasonable and necessary defense costs." *Behnke v. State Farm General Ins. Co.*, 196 Cal.App.4th 1443, 1461-1462 (2011). Disputes over fees incurred under Cal. Civ. Code § 2860(c)—sometimes called "*Cumis* fees"—are resolved by arbitration or agreement with the fees and amount of time billed reviewed for "reasonableness." *United Pacific Ins. Co. v. Hall*, 199 Cal.App.3d 551, 557 (1988). Here, the parties reached agreement on rates, memorialized their agreement, and the bills are being paid in accordance therewith.

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Bankruptcy courts lack discretion to not enforce arbitration where, as here, there is no "inherent conflict" between allowing the arbitration and the purposes of the Bankruptcy Code. As the U.S. Supreme Court held in *Shearson/American Express, Inc. v. McMahon*, the Federal Arbitration Act "***mandates*** enforcement of agreements to arbitrate statutory claims" absent congressional intent to "preclude a waiver of judicial remedies for the statutory rights at issue." 482 U.S. 220, 226-227 (1987) (emphasis added). The Supreme Court instructed that congressional intent to preclude such a waiver can only be evidenced by the text or legislative history of the relevant statute or by "an inherent conflict between arbitration and the statute's underlying purposes." *Id.* at 227. Finding no such congressional intent with regard to the claims at issue there, the Court held that the parties' arbitration agreements must be enforced. *Id.* at 238, 242. Following *Shearson*, where there is no inherent conflict between arbitration and the Bankruptcy Code's underlying purposes, arbitration agreements involving even core issues must be enforced.

5. <u>The Face of the Complaint Shows That the Moving Insurers Properly Denied Coverage.</u>

Finally, the Diocese's contention that Moving Insurers received tenders but "improperly denied" coverage, TAC ¶¶ 40-42, 47, is not "sufficient factual matter, accepted as true, to state a claim for relief that is plausible on its face." *In re Harris*, 2012 WL 5986534, at *4. Exhibit A, which the Diocese contends "lays out the specific claims as of the date of this filing," TAC at 1, identifies fifteen claims for which the Moving Insurers allegedly, improperly denied coverage. *See* Ex. A (Claimant Nos. 3-4 ('72-'75), 7 ('75-'77), 13 ('75-'77), 18 ('86-'87), 20 ("Late 1970's" or '76-'77), 22 ('73-'75), 29 ('75-'79), 36 ('72-'73), 38 ("Dec-94")). But the face of the TAC shows that ***none of these claims*** allege abuse that occurred during the Moving Insurers' alleged policy periods. *Compare id. with* TAC ¶ 7 (alleging Pacific Indemnity's primary policies cover Mar. 12, 1962-Oct. 25, 1963 and Oct. 25, 1963 to Oct. 25, 1966), ¶ 11 (alleging INA's excess policy covers Oct. 25, 1966-Oct. 25, 1970), ¶ 15 (alleging Westchester's excess policy covers Dec. 1, 1980 to Dec. 1, 1981), ¶ 20 (alleging Pacific Employers' umbrellas policy covers Mar. 13, 1985 to December 1, 1985).

As for the handful of other purportedly, improperly denied claims that are identified on Exhibit A as falling within the Moving Insurers' coverage years (Ex. A (Claimant Nos. 21 ('79-'83), 30 ('66-'75), 31 ('66-'76), 35 ('72-'80), 43 ('68-'69)), the actual complaints identified in Exhibit A allege abuse ***outside*** the policy periods alleged by the Diocese.[8] And, even if the dates of abuse listed in the Exhibit were correct, the coverage periods corresponding to these dates are for excess or umbrella claims, and not ripe for defense.

It is axiomatic that an insurer cannot be liable for allegedly failing to provide coverage for years outside of its coverage period, warranting dismissal. *See, e.g., Warner v. Fire Ins. Exch.*, 230 Cal. App. 3d 1029, 1031 (Ct. App. 1991) (affirming dismissal on demurrer "because there was no damage to tangible property during the time the policy was in effect").

The letters issued by the Moving Insurers in response to the tenders cited in the TAC convey that the Moving Insurers accept defense under a reservation, where abuse is alleged within the policy period and state that if the policyholder has "any additional information that you feel would either cause us to review our position or would assist us in our investigation or determination, we ask that you advise us as soon as possible." RJN Ex. 5 (Letter from Jennifer Capone to Eileen R. Ridley re: Reservation of Rights (Jan. 24, 2024)) at 8.[9] If a response to a

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[8] *See* RJN Ex. 1 Compl ¶¶ 19-20, Case No. RG20064685 (Superior Ct. Cal., Alameda Cnty., June 12, 2020) (alleging the perpetrator began "grooming Plaintiff" in "approximately 1966" and sexually assaulted Plaintiff in "approximately 1973."); RJN Ex. 2 Compl. ¶¶ 19-20, Case No. RG20064759 (Superior Ct. Cal., Alameda Cnty., June 12, 2020) (alleging that the perpetrator began "grooming" Plaintiff "[s]tarting in approximately 1971," and "from approximately 1973 through 1976…committed multiple acts of childhood sexual assault"); RJN Ex. 3 Compl. for Damages for Childhood Sexual Assault ¶¶ 4, 8, Case No. RG20079359 (Superior Ct. Cal., Alameda Cnty., Nov. 6, 2020) (alleging that the Plaintiff was repeatedly sexually assaulted between 1972 and 1978); RJN Ex. 4 Compl. ¶ 24, Case No. RG20075018 (Superior Ct. Cal., Alameda Cnty., Sept. 22, 2020) (alleging that the perpetrator began committing acts of childhood sexual assault against Plaintiff in the late 1980's, which continued for several years). The Moving Insurers have submitted a request for judicial notice in conjunction with this brief, attaching a true and correct copy of each of the four complaints cited herein and asking the Court to take judicial notice of the allegations of the Complaints because they are cited in the Debtor's TAC.

[9] In addition, Pacific Indemnity and INA sent omnibus correspondence to the Diocese to address all claims alleging abuse not within their policy periods and requested that if "the Diocese of Oakland has any information which may be pertinent to our investigation . . . we ask that the Diocese of Oakland forward it to us immediately for our review and consideration." *See* RJN Ex.

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tender is based on incomplete or mistaken facts, the Moving Insurers invited dialogue. Nowhere in the TAC does the Diocese allege that it raised an issue that went unaddressed.

The adversary proceeding should not devolve into a "gotcha" where money and time is devoted to conjured up claims.

C. The Diocese Still Fails to State a Claim for Umbrella or Excess Coverage.

The Diocese's breach of contract and declaratory relief claims for excess and umbrella coverage must be dismissed because the Diocese has failed to allege exhaustion, a condition precedent for excess coverage. And even if, as the Court suggested, a more flexible pleading standard applies to the Diocese's declaratory relief claim, it must still be dismissed because the Diocese has not plausibly alleged "a reasonable possibility" that the excess policies will be triggered. Nov. 14, 2023 Tr. at 64:10-11.

Breach of Contract Claim. As the Court explained, on a breach of contract claim, "primary insurance must be exhausted before liability attaches under a secondary policy." *Id. at* 62:15-18 (describing the holding of *Iolab Corp. v. Seaboard Surety Co.*, 15 F.3d 1500 (9th Cir. 1994)). Here, the Diocese's breach of contract claim fails because it has made no attempt whatsoever to allege that the underlying insurance has in fact been exhausted. Instead, the Diocese provides the conclusory allegation that, given the number of claims, there is a "substantial likelihood" that the underlying limits will exhaust *in the future*. TAC ¶ 30. But to plausibly allege a breach of contract claim against an excess insurer, the Diocese was required to allege that the underlying insurance actually had exhausted, not that there is a likelihood that it will exhaust at some later date. *Cooper v. Certain Underwriters at Lloyd's*, 716 F. App'x 735, 735 (9th Cir. 2018) (affirming dismissal of insured's claim against its excess insurer for breach of contract where the excess policy was not triggered as underlying policy limits were not exhausted through payments). Because the Diocese has failed to allege exhaustion of the underlying insurance, its breach of contract claim must be dismissed for failure to state a claim with respect to excess and umbrella insurance.

See RJN Ex. 6, (Letter from Jennifer Capone to Eileen R. Ridley re: Declination (Jan. 24, 2024), at 2.

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Declaratory Relief Claim. The Diocese's declaratory relief claim with respect to excess and umbrella insurance fails for the same reason as its breach of contract claim—it does not plausibly allege exhaustion of the underlying insurance. *Webcor Constr., L.P. v. Zurich Am. Ins. Co.*, No. 17-CV-0220, 2017 WL 4310763, at *3-4 (N.D. Cal. Sept. 28, 2017) (granting excess insurer's motion to dismiss insured's claims for *inter alia* breach of contract and declaratory relief, where insureds failed to "allege exhaustion or even facts giving rise to an inference of exhaustion of the primary policies").

Even if there is, as the Court suggested, a different, more flexible pleading standard on a declaratory relief cause of action, the Diocese fails to meet it, as it has not pled facts showing "a reasonable possibility" that the excess and umbrella coverage will be implicated. Instead, the Diocese provides only the conclusory assertion that "it is presently facing in excess of 400 Suits seeking a total amount of damages which has the substantial likelihood of being in excess of the available limits." TAC ¶¶ 30-31. That allegation is insufficient to plausibly allege a declaratory relief claim with respect to excess and umbrella insurance, as it does not specify the damages sought in any of the specific lawsuits, or even the total amount of damages sought. There is thus no way to tell, simply based on the number of lawsuits, whether there is a reasonable possibility that the underlying insurance will exhaust and the excess and umbrella insurance will be implicated. Although the Court instructed that the Diocese need not plead exhaustion "down to the penny," the TAC does not allege ***any dollar amount whatsoever***. Daniels Decl. Ex 1, Nov. 14, 2023 Tr. at 64:13. That is plainly insufficient under the Court's guidance.

Moreover, *Ludgate Ins. Co. v. Lockheed Martin Corp.*—which the court relied upon for its articulation of what the Diocese is required to plead on its declaratory relief claim—establishes that the Diocese is required to plead a sufficient factual basis that umbrella and excess insurance has been triggered. In that case, the insured's complaint specified a specific amount of indemnity already incurred, and provided an estimate, based on the company's experience, for the total amount the company was likely to incur, which was found sufficient for pleading a declaratory relief action against its excess insurer. 82 Cal. App. 4th 277, 287 (2000). Here, the Diocese has pleaded no dollar amounts whatsoever, so it is impossible to know whether there is a reasonable

possibility that the excess and umbrella policies will be implicated.

CONCLUSION

For all of the foregoing reasons, the Court should grant the Moving Insurers' Motion to Dismiss the TAC for failure to state a claim.

Dated: January 26, 2024

By: */s/ Karen Rinehart*

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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: The Roman Catholic Bishop of Oakland, Debtor in Possession.	Chapter 11 Case No. 23-40523-WJL Adv. Pro. No. 23-04028 WJL
The Roman Catholic Bishop of Oakland, Plaintiff, v. Pacific Indemnity, *et al.* Defendants.	**MOVING INSURERS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS THIRD AMENDED COMPLAINT** Hearing Date: March 27, 2024 Hearing Judge: Hon. William J. Lafferty, III Time: 10:30 a.m. Place: Courtroom 220 1300 Clay Street Oakland, CA 94612

I. INTRODUCTION

Pursuant to Federal Rule of Evidence 201, Moving Insurers respectfully request that the Court take judicial notice of the following documents and also deem them incorporated by reference into the *Third Amended Complaint for Declaratory Judgement Relief, Breach of Contract, and Breach of Statutory Duty* [Dkt. No. 163] ("TAC")[1]:

- Complaint filed June 12, 2020 in Superior Court of California, County of Alameda, Case No. RG20064685 ("John MM Doe Complaint," attached as **Exhibit 1**);[2]
- Complaint filed on June 12, 2020 in Superior Court of California, County of Alameda, Case No. RG20064759 ("John PM Doe Complaint," attached as **Exhibit 2**);
- Complaint filed on November 6, 2020 in Superior Court of California, County of Alameda, Case No. RG20079359 ("Jane Doe OK 1024 Complaint," attached as **Exhibit 3**);
- Complaint filed on September 22, 2020 in Superior Court of California, County of Alameda, Case No. RG20075018 ("John Doe 660 Complaint," attached as **Exhibit 4**, and together with John MM Doe Complaint, John PM Doe Complaint, and Jane Doe OK 1024 Complaint, collectively the "Complaints");
- January 24, 2024 Reservation of Rights Letter from Jennifer Capone (AVP) to Eileen R. Ridley, Esq. of Foley & Lardner LLP (Counsel for Diocese) (relating to certain claims alleging abuse for year 1960-69, pertaining to policy nos. LAC127792, LAC155598, CP26786, and XBC24312, attached as **Exhibit 5**); and
- January 24, 2024 Declination Letter from Jennifer Capone (AVP) to Eileen R. Ridley, Esq. of Foley & Lardner LLP (Counsel for Diocese) (relating to certain unknown claims that cause declination, attached as **Exhibit 6**) (Exhibits 5 – 6, collectively the

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[1] Unless otherwise stated, all defined terms are consistent with their meaning in Moving Insurers' opening memorandum in support of their Motion to Dismiss Third Amended Complaint ("Motion"), and all internal citations and quotation marks are removed.

[2] Pursuant to the Court's Final Order Authorizing and Approving Special Noticing and Confidentiality Procedures (Dkt. No. 292), Exhibits 1-6 have been redacted to remove "(a) names of abuse claimants or potential abuse claimants, and the names of the Referenced Priests (as defined in the Amendment to Motion), (b) the personal contact information of any current or former employee of the Diocese, or (c) personally identifying information of workers' compensation claimants or minors."

"Response Letters").

The Court may take judicial notice of the Complaints because, in its TAC, the Diocese expressly references each of the Complaints by case number in Exhibit A attached thereto. *See* TAC, at 1 (noting that Exhibit A "lays out the specific claims as of the date of this filing. Each claim details the claim number designated by RCBO, the case number assigned to the case by the court below, the name of the insurance carrier, the years of the alleged abuse, the date RCBO tendered the claim to its respective insurers, the date of the insurer's response, and the insurer's response."); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) ("[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading" are properly judicially noticeable). Thus, this Complaints are appropriate for the Court's notice in consideration of Moving Insurers' Motion as they relate to the matters at issue.

In addition, the Court may take judicial notice of the Response Letters because in its TAC, the Diocese expressly references Moving Insurers' response to the Diocese's assertions with respect to certain claims and that Moving Insurers "issued reservation of rights letters." *See* TAC ¶¶ 7, 11, 15 (alleging that Moving Insurers "has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as noted in Exhibit A."); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688-89 (9th Cir. 2001) ("[D]ocuments whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the pleading" are properly judicially noticeable). Thus, these documents are also appropriate for the Court's notice and consideration of Moving Insurers' Motion, and relates to the matters at issue.

II. ARGUMENT

Federal Rule of Evidence 201 permits a court to take judicial notice of a fact "not subject to reasonable dispute" because the fact is either "(1) generally known within the territorial jurisdiction of the trial court or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). In addition, under Rule 201, "documents whose contents are alleged in a complaint and whose authenticity no

party questions, but which are not physically attached to the pleading, may be considered in ruling on a 12(b)(6) motion to dismiss." *See, e.g.*, *Davis v. HSBC Bank Nev., N.A.*, 691 F.3d 1152, 1160 (9th Cir. 2012) ("A court[ ] may [consider] 'documents whose contents are alleged in a complaint and whose authenticity no party questions, but which are not physically attached to the [plaintiff's] pleading'" and "treat such documents as part of the complaint") (citations omitted); *Hoey v. Sony Elecs., Inc.*, 515 F. Supp. 2d 1099, 1103 (N.D. Cal. 2007) (same); *Khoja v. Orexigen Therapeutics, Inc.,* 899 F.3d 988, 1002-3 (9th Cir. 2018) (a court may take notice of an adjudicative fact not subject to reasonable dispute that are incorporated by reference in the complaint and form the basis of plaintiff's claims). Moreover, a court may take judicial notice of documents not subject to reasonable dispute "not for the truth of the matters asserted" but rather to establish the fact that such documents were served, and the record of such documents exist. *See Lexington Ins. Co. v. Energetic Lath & Plaster, Inc.*, 2015 WL 5436784, at *3 (E.D. Cal. Sept. 15, 2015) ("[T]he court may take judicial notice of the existence of documents without taking judicial notice of the truth of the matters asserted therein" (citing *In re Bare Escentuals, Inc. Sec. Lit*., 745 F.Supp.2d 1052, 1067 (N.D. Cal. Sept. 30, 2010)).

Judicial Notice of the Complaints

Here, the Complaints are appropriate for judicial notice. These documents were served on the Diocese by the respective plaintiffs, and they are within the Diocese's possession, custody and control (having been tendered by Diocese's counsel to certain Moving Insurers). *See* TAC, Exhibit A at 6-8. The documents also form the basis of several of Diocese's request for tender of defense relating to a pending lawsuit that are the subject of the TAC. *See, e.g.,* TAC ¶ 11 (specifically referencing claim number 43 in relation to defendant INA, and claim number 43 is identified as the case number for the John Doe 660 Complaint in Exhibit 4).

Given the Diocese's specific references to the Complaints in the TAC and the fact that the Complaints are within Diocese's possession and control, there is no dispute regarding these documents' existence as a matter of record, with respect to the Moving Insurers' Motion. *See In re Heritage Bond Litig*., 2003 WL 27386852, at *2 (C.D. Cal. Jan. 27, 2003) ("[D]ocuments whose contents are alleged in a complaint and whose authenticity is not in question may be

considered in a motion to dismiss"); *see also In re Sorrento Therapeutics*, 2021 WL 6062943, at *4 (N.D. Cal. Nov. 18, 2021) (incorporating by reference document quoted from and referenced in complaint).

Judicial Notice of the Response Letters

Further, the Response Letters are also appropriate for judicial notice here. These documents were served in response to the Diocese's request, and are within the Diocese's possession, custody and control (having been sent to Diocese's counsel). *See* Exhibits 5–6. These documents also reflect certain Moving Insurers' reservations of rights and response to the Diocese's request for tender of defense relating to a pending lawsuit. *See, e.g.*, Ex. 5 at 1 ("The purpose of this omnibus letter is to address all claims alleging abuse within the policy periods of Pacific Indemnity policy no. no. LAC 127792, effective October 25, 1960 to October 25, 1963, Pacific Indemnity policy no. LAC 155598, effective October 25, 1963 to October 25, 1966, INA policy no. CP 26786, effective October 25, 1966 to October 25, 1969, and INA policy no. XBC 24312, effective October 25, 1966 to October 25, 1969, and listed in Exhibit A"). The Diocese expressly alludes to and acknowledges these types of correspondence with Moving Insurers, with respect to certain claims alleged in the TAC. *See, e.g.,* TAC ¶¶ 7, 11, 15 (alleging that Moving Insurers "has either failed to respond to the tenders, issued reservation of rights letters or explicitly denied coverage as noted in Exhibit A."); *see also* TAC, Exhibit A at 13 (alleging certain Moving Insurers' response, *i.e.,* "ROR," to particular claims). Given the Diocese's acknowledgement of receiving and express reference to these type of correspondence with Moving Insurers, and the fact that these Response Letters are within Diocese's possession and control, there is no dispute regarding these documents' existence as a matter of record in regards to Moving Insurers' Motion. *See In re Heritage Bond Litig.*, 2003 WL 27386852, at *4 (granting request for judicial notice of letters served "on the grounds that the contents of such documents are alleged . . . [and] their authenticity is not in question, and they have not been opposed by Plaintiffs."); *see also In re Sorrento Therapeutics*, 2021 WL 6062943, at *4. Finally, the Court should take judicial notice of the Response Letters because it has taken notice of these types of documents before. *See, e.g., Travelers Com. Ins. Co. v. New York Marine & Gen. Ins. Co.*, 2022

WL 100109, at *1 n.4 (C.D. Cal. Jan. 6, 2022) (finding basis for granting request for judicial notice "as to the Reservation of Rights Letter").

III. CONCLUSION

For these reasons, Moving Insurers request that the Court grant their request for judicial notice of Exhibits 1–6, the Complaints and the Response Letters.

Dated: January 26, 2024

By: */s/ Karen Rinehart*

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EXHIBIT 1

FILED BY FAX
ALAMEDA COUNTY
June 12, 2020
CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy
CASE NUMBER:
RG20064685

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Attorneys for Plaintiff JOHN MM DOE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED DIVISION

JOHN MM DOE, an individual,

Plaintiff,

v.

ROE 1, a California corporation sole; ROE 2, an entity of unknown form; and ROES 3-40, inclusive,

Defendants.

Case No.:

COMPLAINT FOR:

1. Negligence;
2. Negligent Supervision and/or Retention;
3. Sexual Battery (Cal. Civ. Code §1708.5) - Vicarious Liability By Authorization and Ratification;
4. Sexual Battery (Cal. Civ. Code §1708.5) - Vicarious Liability By Respondeat Superior;
5. Aiding and Abetting Sexual Battery; and
6. Intentional Infliction of Emotional Distress.

REQUEST FOR JURY TRIAL

Plaintiff JOHN MM DOE hereby files this Complaint against defendants ROE 1, a corporation sole, and ROES 2-40 (collectively, "Defendants"), and alleges as follows:

PARTIES

1. Plaintiff is an individual resident in the State of California who was also a resident of the County of Alameda, State of California, at all relevant times mentioned herein. JOHN MM DOE is a fictitious name used to protect Plaintiff's privacy as a victim of childhood sexual assault,

as defined by section 340.1 of the Code of Civil Procedure. Plaintiff was born in [redacted] and was a minor throughout the period of childhood sexual assault alleged herein. Plaintiff brings this Complaint pursuant to Code of Civil Procedure § 340.1, as amended by Assembly Bill 218, for damages suffered as a result of childhood sexual assault.

2. Defendant ROE 1 is a corporation sole organized for religious purposes under the laws of the State of California with its principal place of business in Oakland, California. At all material times herein, ROE 1 owned and controlled the parish known as Defendant ROE 2, in which the church attended by Plaintiff was located (the "Parish Church"), and employed the priests providing services at the Parish Church. "ROE 1" is a fictitious designation used in accordance with California Code of Civil Procedure § 340.1(m). Plaintiff will hereafter apply to the Court for permission to amend this Complaint to substitute the true name of ROE 1 in place of the fictitious designation, pursuant to Code of Civil Procedure § 340.1(n).

3. Defendant ROE 2 is an entity of unknown form, with its principal place of business in Oakland, California. At all material times herein, ROE 2 owned and controlled the Parish Church, and employed the priests providing services at the Parish Church. "ROE 2" is a fictitious designation used in accordance with California Code of Civil Procedure § 340.1(m). Plaintiff will hereafter apply to the Court for permission to amend this Complaint to substitute the true name of ROE 2 in place of the fictitious designation, pursuant to Code of Civil Procedure § 340.1(n).

4. Various others, presently unknown to Plaintiff, participated with Defendants ROE 1 and ROE 2 in the violations of law alleged in this Complaint and have engaged in conduct and made statements in furtherance thereof. ROES 3-20 are individuals, and participated in the activity which is the subject of this action, as alleged in this Complaint. ROES 21-40 are entities of unknown form that participated in the activity that is the subject of this action. Plaintiff does not know the true names and capacities of defendants named in this action as ROES 3-40, and therefore sues them under fictitious names. Plaintiff will request permission to amend this Complaint to state the true names and capacities of these fictitiously named defendants when he ascertains their identities. Plaintiff is informed and believes, and based thereon alleges, that these

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fictitiously named defendants are legally responsible in some manner for the acts and omissions set forth below, and therefore are liable to Plaintiff for the relief requested.

5. Father [redacted] ("[redacted]"), now deceased, was at all relevant times herein the pastor assigned by ROE 1 to provide services as a counselor, advisor and priest at the Parish Church in Oakland, California. As such, on information and belief, [redacted] was at all relevant times herein an employee, agent and/or servant of ROE 1 and ROE 2, and was under their direct supervision and control. Plaintiff is informed and believe, and based thereon alleges, that at all relevant times herein, ROE 1 and ROE 2 had responsibility, supervision and control over [redacted] and that at all times material, [redacted] was under ROE 1's and ROE 2's direct supervision, employ, and control when he committed the wrongful and negligent acts described herein. [redacted] engaged in this conduct while acting in the course and scope of his employment with ROE 1 and ROE 2, and/or accomplished the sexual abuse and fraud by virtue of his job created authority in which he was held out by ROE 1 and ROE 2 as a qualified advisor, teacher, counselor and leader of minor children.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein Defendants and each of them, were the agents, servants, employers, masters, servants, or co-conspirators of each of the remaining co-Defendants, and in doing the things hereinafter alleged were acting within the course and scope of such relationship and with the permission, approval, ratification, or consent of their co-Defendants.

7. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein there existed a unity of interest and ownership among the Defendants and each of them, such that an individuality and separateness between Defendants discontinued. Defendants were successors-in-interest and/or alter egos of the other Defendants in that they controlled, commanded and operated each other without separate identity, observation of formalities, or any other separateness. To continue to maintain the façade of a separate and individual existence between and among Defendants, and each of them, would serve to perpetuate a fraud and injustice.

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FACTS

Defendants' Knowledge of Sexual Abuse by [redacted]

8. In 1962, the Vatican issued a Papal Instruction binding upon all Bishops throughout the world, including the Bishop of ROE 1. The instruction was binding upon the Bishop of ROE 1 until 2001. The instruction directed that allegations and reports of childhood sexual abuse by priests were required to be kept secret and not disclosed either to civil authorities such as law enforcement, to co-employees or supervisors of parish priests, or to parishioners generally. Defendant ROE 1's procedure required Bishops to keep secret files, also known as confidential files, concerning any sexual abuse allegations against priests, which files were not to be made public.

9. While there were written processes that required that the dioceses keep a written record of claims of clergy sexual abuse, the Bishops in the United States maintained any such records in secret, confidential files, and applied a policy of clandestine transfer of accused priests from one local or diocesan assignment to another, or from one diocese to another affiliated religious entity. The parishioners, students or adherents at the receiving diocese or entity were not informed of any accusations of sexual abuse of minors against the transferred priest.

10. [redacted] was ordained as a Catholic priest in [redacted]. In 1966, [redacted] was assigned by ROE 1 and ROE 2 to the Parish Church in Oakland, to provide instruction, supervision, monitoring and spiritual counseling of minor children at the Parish Church.

11. In the early 1960s, [redacted] was arrested and charged in the Santa Cruz area with engaging in a sexual act with a man of 19 years of age, who was considered a minor at that time. The Bishop of ROE 1 was promptly informed of this arrest.

12. On February 17, 2019, ROE 1 issued a report, and posted it on its website, that provided a list of priests employed by ROE 1 that had been credibly accused of sexual abuse of a minor, and admitted that [redacted] had been credibly accused of childhood sexual abuse. The report stated that the "abuse occurred: 1971-1973."

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13. In February 2004, the Bishop of ROE 1 publicly apologized to an Alameda County parish community for abuse perpetrated by [redacted].

[redacted]'s Sexual Abuse of Plaintiff

14. Plaintiff was born in [redacted]. He attended the Parish Church during 1966 to 1975, where he regularly participated in church activities such as catechism and mass. [redacted] was involved in all of these activities. As a result, Plaintiff developed great admiration, trust, and respect for, and obedience to the priests, counselors and advisors at the Parish Church, including [redacted].

15. In 1966, [redacted] began serving as a priest, counselor and advisor at the Parish Church. ROE 1 and ROE 2, by appointing [redacted] as a pastor at the Parish Church, held [redacted] out as a fit and competent agent of ROE 1 and, specifically, as a fit person to interact with and guide the Parish Church's youth, including Plaintiff, in both educational and religious matters. Generally, [redacted]'s employment duties included providing supervision, care, teaching, counseling and leadership to minor children at the Parish Church, including children entrusted to his care such as Plaintiff. Because of these duties, [redacted] routinely interacted with minor children at the Parish Church, including Plaintiff.

16. Plaintiff first met and came to know Father [redacted] as their parish priest and spiritual counselor.

17. Father [redacted] was an alcoholic and was often visibly under the influence of alcohol during the conduct of his duties as a priest. Father [redacted]'s alcoholism, combined with his pedophilia, made him particularly dangerous to his parishioners, a fact of which the Church was fully aware.

18. Father [redacted] regularly hired minor parishioners, purportedly to assist him in his duties at the Parish Church's rectory, with the full knowledge, acquiescence and authorization of the Church. Father [redacted] paid the minor parishioners very high fees in order to entice them into spending time in the rectory with him, where he groomed them for sexual abuse and then repeatedly sexually assaulted them.

19. Starting in approximately 1966, [redacted] began grooming Plaintiff for sexual abuse, by tousling his hair, patting his shoulders, and letting Plaintiff know that if he worked for [redacted] in the rectory he would earn substantial sums of money.

20. Then in approximately 1973, Plaintiff spoke with [redacted] several times in the rectory about whether Plaintiff could be hired by [redacted] to assist [redacted] in his provision of services by and on behalf of ROE 1 and ROE 2. [redacted] told Plaintiff that if he wanted the job, and the substantial remuneration that came with it, he needed to undress and try on a special uniform, which was obviously too big for him. [redacted] then made Plaintiff fully undress in front of him, and put on an oversize pair of slacks and shirt, and then [redacted] repeatedly unzipped Plaintiff's pants, and pretended to adjust the clothes, such as tucking in the shirt tails but in actuality using this as an excuse to repeatedly touch Plaintiff's penis, smoothing out the shirt and pant legs front and back and inside the pants as an excuse to touch Plaintiff's buttocks and genitals. [redacted] asserted that he was checking to see if the uniform fit Plaintiff, but this was only an excuse for [redacted] to repeatedly touch Plaintiff everywhere, all to fulfill [redacted]'s sexual pleasure by over and over repeatedly touching and stroking Plaintiff's genitals, buttocks and other areas.

21. Viewing [redacted] as a trusted mentor, Plaintiff was conditioned to comply with [redacted]'s direction and to respect him as a person of authority in spiritual, ethical, and educational matters. [redacted]'s earlier conduct constituted a calculated process of "grooming" Plaintiff, and culminated with his sexual assault and abuse of Plaintiff.

22. During the time period in which [redacted] began grooming Plaintiff as his victim, and during which [redacted]'s molestation and abuse of Plaintiff occurred, Plaintiff was under the care and supervision of Defendants as a minor parishioner of the Parish Church owned, maintained, and controlled by Defendants.

23. Defendants occupied positions of trust and confidence in the parish community and in relation to Plaintiff and other children similarly situated, and they held out their employees, including [redacted], as protectors and guardians of Plaintiff's physical, emotional, psychological, moral and spiritual well-being.

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24. Defendants knew or had reason to know, or was otherwise on notice of, unlawful sexual conduct by [redacted] prior to the molestation of Plaintiff, and failed to take reasonable steps and to implement reasonable safeguards to avoid acts of unlawful sexual conduct [redacted], including, but not limited to, preventing or avoiding placement of [redacted] in a function or environment in which contact with children was an inherent part of that function or environment.

25. Both before and after [redacted]'s sexual abuse of Plaintiff, Defendants continued to employ [redacted] and other pedophile priests and failed to adequately investigate or supervise [redacted]'s activity.

26. [redacted]'s sexual abuse of Plaintiff caused tremendous psychological damage to Plaintiff, due to the fact that [redacted] also sexually abused Plaintiff's brother, and Plaintiff witnessed firsthand a psychotic break caused by [redacted]'s sexual abuse. [redacted]'s sexual abuse of Plaintiff's brother was so extreme, that, shortly after an incident of molestation by [redacted] at the rectory, Plaintiff's brother, in a state of depression and confusion about religion and [redacted]'s continued abuse, experienced a psychotic break and engaged in an act of self-mutilation by severing his hand with a knife, in the belief that this act would ensure his entrance into heaven, literally hearing a voice in his head that kept repeating "if thy hand offends thee, cut it off." Plaintiff's brother was then taken to the ICU. Plaintiff went to the ICU to see his brother, and saw him in a hospital bed with his mutilated arm, a bandaged and bloody limb with a stump on the end, raised in traction, and saw the severed hand itself in a bucket of ice by the bed. Shortly thereafter, [redacted] came into the hospital room, and Plaintiff's brother, though heavily sedated, had an extreme negative reaction, clearly evidenced by the hospital monitors beeping urgent alerts, which caused the family and doctors to quickly remove [redacted] from the hospital room. Plaintiff realized that his brother also had been abused by [redacted]. Plaintiff, having now viewed this psychotic break and its disastrous effects, thereafter lived in fear that [redacted]'s abuse of Plaintiff would likewise cause Plaintiff to suffer a similar psychotic break with equally disastrous consequences.

27. [redacted]'s sexual abuse of Plaintiff constitutes "childhood sexual assault" pursuant to Code of Civil Procedure § 340.1(d).

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28. [redacted]'s sexual assault of Plaintiff is a result of Defendants' cover up, as statutorily defined by Code of Civil Procedure § 340.1(b).

FIRST CAUSE OF ACTION

Negligence

(Against All Defendants)

29. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1-28 above as though fully set forth in this cause of action.

30. Defendants owed Plaintiff a duty to take all reasonable steps to protect him from sexual molestation and abuse by its priests.

31. Defendants, as institutions entrusted with the care of minors, where staff, employees, agents, and management, such as [redacted], were placed in contact with minor children, expressly and implicitly represented that these individuals, including [redacted] were not a threat to children and others who would fall under their influence, control, direction, and guidance.

32. Defendants were aware or had reason to have been aware of how vulnerable children were to sexual harassment, assault, and abuse by mentors, advisors, teachers, counselor and other persons of authority who worked for Defendants.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants breached their duty by failing to take sufficient steps to protect Plaintiff from molestation and abuse by [redacted] when Defendants knew or reasonably should have known that [redacted] posed a risk of sexually abusing Plaintiff.

34. As a proximate result of Defendants' conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will

continue to incur expenses for medical and psychological treatment, therapy, and counseling.

SECOND CAUSE OF ACTION

Negligent Supervision and/or Retention

(Against All Defendants)

35. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1-34 above as though fully set forth in this cause of action.

36. Defendants owed Plaintiff a duty to use due care in appointing, retaining, supervising, assigning and transferring its priests.

37. Defendants breached their respective duties to use due care by their appointment, retention and supervision of [redacted]. Defendants, by and through their respective agents, servants, and employees, knew or reasonably should have known of [redacted]'s dangerous and exploitive propensities and that [redacted] was an unfit agent to be placed regularly in situations in which minors would be in his charge. Despite such knowledge, Defendants negligently retained and/or failed to supervise [redacted] in his position of trust and authority as a priest, instructor and counselor of minor children at the Parish Church, in which capacity he was able to commit the acts of unlawful sexual abuse of Plaintiff alleged above. Defendants, inter alia, failed to use reasonable care in retaining [redacted], failed to provide reasonable supervision of [redacted], failed to use reasonable care in investigating [redacted], and failed to provide adequate warnings to Plaintiff and his family of [redacted]'s dangerous propensities and unfitness, with, on information and belief, little or no restrictions on [redacted]'s contact with minors, where, as a proximate result of Defendants' conduct, [redacted] was able to commit the acts of unlawful sexual abuse of Plaintiff alleged above.

38. As a proximate result of Defendants' conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained

and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

THIRD CAUSE OF ACTION
Sexual Battery
(Vicarious Liability by Authorization and Ratification)
(California Civil Code § 1708.5)
(Against All Defendants)

39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the Paragraphs 1-38 above as though fully set forth in this cause of action.

40. In doing the acts alleged above, [redacted] acted with the intent to cause a harmful and offensive contact with an intimate part or parts of Plaintiff's person.

41. At no time did Plaintiff, a minor, have the capacity to consent to [redacted]'s acts alleged above, nor did Plaintiff consent.

42. [redacted]'s conduct constituted unlawful sexual battery on Plaintiff, as proscribed by California Civil Code § 1708.5.

43. For the purpose of furthering his assigned duties as a parish priest and supervisor and counselor of minor parishioners, [redacted] identified Plaintiff as male child that he could sexually abuse. [redacted], through the position assigned to him by Defendants, then sought and gained Plaintiff's trust, friendship, admiration, obedience and dependence. As a result, Plaintiff was conditioned to comply with [redacted]'s direction and to look to him as an authority figure.

44. Using the power, authority and trust of his position as a parish priest, supervisor, spiritual counselor and authority figure to Plaintiff, [redacted] enticed, induced, directed and coerced Plaintiff to permit [redacted] to commit sexual battery of him.

45. But for [redacted]'s employment by Defendants, and Defendants holding out [redacted] to the community as a fit and competent agent of Defendants, [redacted] would not have been in a position to engage in the sexual battery of Plaintiff.

46. Defendants authorized and adopted [redacted]'s sexual battery of plaintiff, since Defendants had prior knowledge of improper sexual abuse of minors by [redacted], yet Defendants

nevertheless took no action to stop [redacted]'s conduct and continued to place [redacted] in a position where he had unsupervised access to minor children, and thus permitted [redacted] to engage in the sexual battery of Plaintiff, and by this conduct authorized and adopted [redacted]'s actions towards Plaintiff.

47. Defendants ratified and adopted [redacted]'s sexual battery of plaintiff, since Defendants not only had prior knowledge of improper sexual abuse of minors by [redacted], but representatives of Defendants with a duty to report observed [redacted] acting inappropriately with Plaintiff, yet Defendants nevertheless took no action to stop [redacted]'s conduct nor to report his conduct, and thus Defendants ratified and adopted [redacted]'s actions towards Plaintiff.

48. Defendants ratified and authorized [redacted]'s childhood sexual abuse of Plaintiff by (1) failing to discharge, dismiss, discipline, suspend and/or supervise [redacted] even though he was known by Defendants to have been accused of sexually abusing children, (2) actively shielding [redacted] from responsibility for his childhood sexual assault of Plaintiff and other minors, (3) failing to acknowledge the existence of complaints against [redacted] of childhood sexual assault on minors, (4) failing to report such complaints to civil or criminal authorities, (5) providing financial support to [redacted] which in part underwrote the childhood sexual abuse of Plaintiff and/or other minors, and (6) failing to take steps to timely remove [redacted] from the priesthood so as to permanently prevent him from using his authority bestowed upon him by Defendants to gain access to minors and sexually abuse them.

49. As a proximate result of the conduct of Defendants, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

50. In performing the above-alleged acts, Defendants acted with oppression, fraud, or malice, or in conscious disregard of the rights of Plaintiff. Plaintiff is therefore entitled to the imposition of exemplary damages against Defendants. At this time, the Complaint does not allege punitive damages against Defendants, but Plaintiff will seek an order authorizing the amending of this Complaint to add a claim for punitive damages pursuant to California Code of Civil Procedure § 425.14.

FOURTH CAUSE OF ACTION
Sexual Battery
(Vicarious Liability by Respondent Superior)
(California Civil Code § 1708.5)
(Against All Defendants)

51. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1-50 above as though fully set forth in this cause of action.

52. In doing the acts alleged above, [redacted] acted with the intent to cause a harmful and offensive contact with an intimate part or parts of Plaintiff's person.

53. At no time did Plaintiff, a minor, have the capacity to consent to [redacted]'s acts alleged above, nor did Plaintiff consent.

54. [redacted]'s conduct constituted unlawful sexual battery on Plaintiff, as proscribed by California Civil Code § 1708.5.

55. That [redacted] would consciously exploit his status, knowledge and power to coerce or trick Plaintiff into allowing sexual contact was a reasonably foreseeable risk of his employment based on Defendants' knowledge of [redacted]'s propensity to sexually abuse minor students and Defendants' specific knowledge of [redacted]'s dangerous and exploitive past behavior. Thus, Defendants are liable to Plaintiff for [redacted]'s acts of sexual abuse under the doctrine of respondeat superior.

56. As a proximate result of Defendants' conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-

esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

57. In performing the above-alleged acts, Defendants acted with oppression, fraud, or malice, or in conscious disregard of the rights of Plaintiff. Plaintiff is therefore entitled to the imposition of exemplary damages against Defendants. At this time, the Complaint does not allege punitive damages against Defendants, but Plaintiff will seek an order authorizing the amending of this Complaint to add a claim for punitive damages pursuant to California Code of Civil Procedure § 425.14.

FIFTH CAUSE OF ACTION
Aiding and Abetting Sexual Battery
(Violation of California Civil Code Section 1708.5)
(Against All Defendants)

58. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1-57 above as though fully set forth in this cause of action.

59. In doing the acts alleged above, [redacted] acted with the intent to cause a harmful and offensive contact with an intimate part or parts of Plaintiff's person.

60. At no time did Plaintiff, a minor, have the capacity to consent to [redacted]'s acts alleged above, nor did Plaintiff consent.

61. [redacted]'s conduct constituted unlawful sexual battery on Plaintiff, as proscribed by California Civil Code § 1708.5.

62. Defendants knew that [redacted]'s conduct was wrongful and that [redacted] would commit sexual battery, yet Defendants assisted and encouraged such conduct by, inter alia, allowing [redacted]'s unrestricted contact with minors such as Plaintiff, failing to supervise any such contact, placing [redacted] at the Parish Church with no notice to Plaintiff, his family or other parishioners of [redacted]'s illegal actions and dangerous proclivities, and retaining [redacted] despite their actual

knowledge of his illegal actions and proclivities.

63. As a proximate result of the conduct of Defendants, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

64. In performing the above-alleged acts, Defendants acted with oppression, fraud, or malice, or in conscious disregard of the rights of Plaintiff. Plaintiff is therefore entitled to the imposition of exemplary damages against Defendants. At this time, the Complaint does not allege punitive damages against Defendants, but Plaintiff will seek an order authorizing the amending of this Complaint to add a claim for punitive damages pursuant to California Code of Civil Procedure § 425.14.

SIXTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(Against All Defendants)

65. Plaintiff re-alleges and incorporates by reference each and every set forth in Paragraphs 1-64 above as though fully set forth in this cause of action.

66. At all relevant times, Defendants bore ultimate responsibility for ensuring the physical and emotional well-being of the minor parishioners at the Parish Church, by appointing, retaining and supervising all representatives and staff who provided services at the Parish Church, including [redacted] and particularly for ensuring the physical and emotional well-being of the children and adolescents entrusted into [redacted]'s care, including Plaintiff.

67. Defendants' conduct in assigning [redacted] to the Parish Church, concealing [redacted]'s deviant and dangerous proclivities from the parents of students at the Parish Church, and retaining and/or failing to remove [redacted] from the Parish Church, when Defendants knew or reasonably

should have known of [redacted]'s deviant and dangerous proclivities, left Plaintiff in harm's way.

68. Defendants' above-described conduct was extreme and outrageous and was done with the intention of causing, or reckless disregard of the probability of causing, Plaintiff to suffer severe and extreme emotional distress.

69. As a proximate result of the conduct of Defendants, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

70. In performing the above-alleged acts, Defendants acted with oppression, fraud, or malice, or in conscious disregard of the rights of Plaintiff. Plaintiff is therefore entitled to the imposition of exemplary damages against Defendants. At this time, the Complaint does not allege punitive damages against Defendants, but Plaintiff will seek an order authorizing the amending of this Complaint to add a claim for punitive damages pursuant to California Code of Civil Procedure § 425.14.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendants:

1. For damages for past and future medical, psychotherapy, and related expenses according to proof;
2. For general damages for physical and mental pain and suffering and emotional distress according to proof;
3. For damages for past loss wages and past earning capacity and/or future lost wages and loss of earning capacity according to proof;
4. For all costs and expenses;

5. For treble damages against Defendants, as authorized by the Code of Civil Procedure § 340.1(b);

6. For prejudgment interest at the maximum legal rate;

7. For such other and further relief as the Court may deem proper.

Dated: June 10, 2020

GROSS & BELSKY P.C.

By: */s/ Terry Gross*
Terry Gross

Attorneys for Plaintiff JOHN MM DOE

DEMAND FOR JURY TRIAL

Plaintiff, by his undersigned attorneys, respectfully demands a jury trial on all issues so triable.

Dated: June 10, 2020

GROSS & BELSKY P.C.

By: */s/ Terry Gross*

Terry Gross

Attorneys for Plaintiff JOHN MM DOE

EXHIBIT 2

FILED BY FAX
ALAMEDA COUNTY
June 12, 2020
CLERK OF
THE SUPERIOR COURT
By Milagros Cortez, Deputy
CASE NUMBER:
RG20064759

Terry Gross (SBN 103878)
Adam C. Belsky (SBN 147800)
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Attorneys for Plaintiff JOHN PM DOE

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED DIVISION

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6. Sexual Battery; and
7. Intentional Infliction of Emotional Distress.

REQUEST FOR JURY TRIAL

Plaintiff JOHN PM DOE hereby files this Complaint against defendants ROE 1, a corporation sole, and ROES 2-40 (collectively, "Defendants"), and alleges as follows:

PARTIES

1. Plaintiff is an individual resident in the State of California who was also a resident

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of the County of Alameda, State of California, at all relevant times mentioned herein. JOHN PM DOE is a fictitious name used to protect Plaintiff's privacy as a victim of childhood sexual assault, as defined by section 340.1 of the Code of Civil Procedure. Plaintiff was born in [redacted] and was a minor throughout the period of childhood sexual assault alleged herein. Plaintiff brings this Complaint pursuant to Code of Civil Procedure § 340.1, as amended by Assembly Bill 218, for damages suffered as a result of childhood sexual assault.

2. Defendant ROE 1 is a corporation sole organized for religious purposes under the laws of the State of California with its principal place of business in Oakland, California. At all material times herein, ROE 1 owned and controlled the parish known as Defendant ROE 2, in which the church attended by Plaintiff was located (the "Parish Church"), and employed the priests providing services at the Parish Church. "ROE 1" is a fictitious designation used in accordance with California Code of Civil Procedure § 340.1(m). Plaintiff will hereafter apply to the Court for permission to amend this Complaint to substitute the true name of ROE 1 in place of the fictitious designation, pursuant to Code of Civil Procedure § 340.1(n).

3. Defendant ROE 2 is an entity of unknown form, with its principal place of business in Oakland, California. At all material times herein, ROE 2 owned and controlled the Parish Church, and employed the priests providing services at the Parish Church. "ROE 2" is a fictitious designation used in accordance with California Code of Civil Procedure § 340.1(m). Plaintiff will hereafter apply to the Court for permission to amend this Complaint to substitute the true name of ROE 2 in place of the fictitious designation, pursuant to Code of Civil Procedure § 340.1(n).

4. Various others, presently unknown to Plaintiff, participated with Defendants ROE 1 and ROE 2 in the violations of law alleged in this Complaint and have engaged in conduct and made statements in furtherance thereof. ROES 3-20 are individuals, and participated in the activity which is the subject of this action, as alleged in this Complaint. ROES 21-40 are entities of unknown form that participated in the activity that is the subject of this action. Plaintiff does not know the true names and capacities of defendants named in this action as ROES 3-40, and therefore sues them under fictitious names. Plaintiff will request permission to amend this

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Complaint to state the true names and capacities of these fictitiously named defendants when he ascertains their identities. Plaintiff is informed and believes, and based thereon alleges, that these fictitiously named defendants are legally responsible in some manner for the acts and omissions set forth below, and therefore are liable to Plaintiff for the relief requested.

5. Father [redacted] ("[redacted]"), now deceased, was at all relevant times herein the pastor assigned by ROE 1 to provide services as a counselor, advisor and priest at the Parish Church in Oakland, California. As such, on information and belief, [redacted] was at all relevant times herein an employee, agent and/or servant of ROE 1 and ROE 2, and was under their direct supervision and control. Plaintiff is informed and believe, and based thereon alleges, that at all relevant times herein, ROE 1 and ROE 2 had responsibility, supervision and control over [redacted] and that at all times material, [redacted] was under ROE 1's and ROE 2's direct supervision, employ and control when he committed the wrongful and negligent acts described herein. [redacted] engaged in this conduct while acting in the course and scope of his employment with ROE 1 and ROE 2 and/or accomplished the sexual abuse and fraud by virtue of his job created authority in which he was held out by ROE 1 and ROE 2 as a qualified advisor, teacher, counselor and leader of minor children.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein Defendants and each of them, were the agents, servants, employers, masters, servants, or co-conspirators of each of the remaining co-Defendants, and in doing the things hereinafter alleged were acting within the course and scope of such relationship and with the permission, approval, ratification, or consent of their co-Defendants.

7. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein there existed a unity of interest and ownership among the Defendants and each of them, such that an individuality and separateness between Defendants discontinued. Defendants were successors-in-interest and/or alter egos of the other Defendants in that they controlled, commanded and operated each other without separate identity, observation of formalities, or any other separateness. To continue to maintain the façade of a separate and individual existence between

and among Defendants, and each of them, would serve to perpetuate a fraud and injustice.

FACTS

Defendants' Knowledge of Sexual Abuse by [redacted]

8. In 1962, the Vatican issued a Papal Instruction binding upon all Bishops throughout the world, including the Bishop of ROE 1. The instruction was binding upon the Bishop of ROE 1 until 2001. The instruction directed that allegations and reports of childhood sexual abuse by priests were required to be kept secret and not disclosed either to civil authorities such as law enforcement, to co-employees or supervisors of parish priests, or to parishioners generally. Defendant ROE 1's procedure required Bishops to keep secret files, also known as confidential files, concerning any sexual abuse allegations against priests, which files were not to be made public.

9. While there were written processes that required that the dioceses keep a written record of claims of clergy sexual abuse, the Bishops in the United States maintained any such records in secret, confidential files, and applied a policy of clandestine transfer of accused priests from one local or diocesan assignment to another, or from one diocese to another affiliated religious entity. The parishioners, students or adherents at the receiving diocese or entity were not informed of any accusations of sexual abuse of minors against the transferred priest.

10. [redacted] was ordained as a Catholic priest in [redacted]. In 1966, [redacted] was assigned by ROE 1 and ROE 2 to the Parish Church in Oakland, to provide instruction, supervision, monitoring and spiritual counseling of minor children at the Parish Church.

11. In the early 1960s, [redacted] was arrested and charged in the Santa Cruz area with a solicitation of a sexual act with a man of 19 years of age, who was considered a minor at that time. The Bishop of ROE 1 was promptly informed of this arrest.

12. On February 17, 2019, ROE 1 issued a report, and posted it on its website, that provided a list of priests employed by ROE 1 that had been credibly accused of sexual abuse of a minor, and admitted that [redacted] had been credibly accused of childhood sexual abuse. The report stated that the "abuse occurred: 1971-1973."

13. In February 2004, the Bishop of ROE 1 publicly apologized to an Alameda County parish community for abuse perpetrated by [redacted]

[redacted]'s Sexual Abuse of Plaintiff

14. Plaintiff was born in [redacted] He attended the Parish Church during 1966 to 1976, where he regularly participated in church activities, such as catechism, mass and the church basketball team. [redacted] was involved in all of these activities. As a result, Plaintiff developed great admiration, trust, and respect for, and obedience to the priests, counselors and advisors at the Parish Church, including [redacted].

15. In 1966, [redacted] began serving as a priest, counselor and advisor at the Parish Church. ROE 1 and ROE 2, by appointing [redacted] as a pastor at the Parish Church, held [redacted] out as a fit and competent agent of ROE 1 and, specifically, as a fit person to interact with and guide the Parish Church's youth, including Plaintiff, in both educational and religious matters. Generally, [redacted]'s employment duties included providing supervision, care, teaching, counseling and leadership to minor children at the Parish Church, including children entrusted to his care such as Plaintiff. Because of these duties, [redacted] routinely interacted with minor children at the Parish Church, including Plaintiff.

16. Plaintiff first met and came to know [redacted] as their parish priest, spiritual counselor and confessor.

17. [redacted] was an alcoholic and was often visibly under the influence of alcohol during the conduct of his duties as a priest. [redacted]'s alcoholism, combined with his pedophilia, made him particularly dangerous to his parishioners, a fact of which the Church was fully aware.

18. [redacted] regularly hired minor parishioners, purportedly to assist him in his duties at the Parish Church's rectory, with the full knowledge, acquiescence and authorization of the Church. [redacted] paid the minor parishioners very high fees in order to entice them into spending time in the rectory with him, where he groomed them for sexual abuse and then repeatedly sexually assaulted them. [redacted] began his grooming when the minor parishioners young, by dispensing candy to the young boys from the porch of the rectory, telling them that when they were older he would hire

them to be rectory "baby sitters" for [redacted] and that he would pay them well for this service.

19. Starting in approximately 1971, [redacted] began these grooming practices with Plaintiff. [redacted] regularly gave Plaintiff candy and urged Plaintiff to work for him in the rectory to earn substantial sums of money.

20. In approximately 1973, [redacted] followed this grooming practice and hired Plaintiff to assist [redacted] at the Parish Church's rectory in the provision of services by and on behalf of ROE 1 and ROE 2. From approximately 1973 through 1976, when Plaintiff was approximately [redacted] to [redacted] years old, [redacted] committed multiple acts of childhood sexual assault, as well as physical and mental abuse, against Plaintiff. [redacted] refused to pay Plaintiff for the work he had done at the rectory, unless Plaintiff acquiesced to the sexual assaults, thus intentionally coercing Plaintiff into participating in sexual assaults as a prerequisite for the exchange of money. [redacted] under the guise that he was giving Plaintiff a physical examination, repeatedly, on several dozen occasions spanning three years, touched and fondled Plaintiff's genitals, buttocks and anal area, and engaged in sexual, lewd and lascivious acts with Plaintiff.

21. Viewing [redacted] as a trusted mentor, Plaintiff was conditioned to comply with [redacted]'s direction and to respect him as a person of authority in spiritual, ethical, and educational matters. [redacted]'s earlier conduct constituted a calculated process of "grooming" Plaintiff, and culminated with his sexual assault and abuse of Plaintiff over a three year period. [redacted] also forced plaintiff, who was still a minor, into acts of prostitution, by withholding Plaintiff's pay until Plaintiff acquiesced to participate in a sexual assault.

22. During the time period in which [redacted] began grooming Plaintiff as his victim, and during which [redacted]'s molestation and abuse of Plaintiff occurred, Plaintiff was under the care and supervision of Defendants as a minor parishioner of the Parish Church owned, maintained, and controlled by Defendants.

23. Defendants occupied positions of trust and confidence in the parish community and in relation to Plaintiff and other children similarly situated, and they held out their employees, including [redacted], as protectors and guardians of Plaintiff's physical, emotional, psychological,

moral and spiritual well-being.

24. Defendants knew or had reason to know, or was otherwise on notice of, unlawful sexual conduct by [redacted] prior to the molestation of Plaintiff, and failed to take reasonable steps and to implement reasonable safeguards to avoid acts of unlawful sexual conduct [redacted], including, but not limited to, preventing or avoiding placement of [redacted] in a function or environment in which contact with children was an inherent part of that function or environment, or notifying law enforcement about his criminal conduct.

25. Both before and after [redacted]'s sexual abuse of Plaintiff, Defendants continued to employ [redacted] and other pedophile priests and failed to adequately investigate or supervise [redacted]'s activity.

26. [redacted]'s sexual abuse of Plaintiff caused tremendous psychological damage to Plaintiff, due to the fact that [redacted] also sexually abused Plaintiff's brother, and Plaintiff witnessed firsthand a psychotic break caused by [redacted]'s sexual abuse. [redacted]'s sexual abuse of Plaintiff's brother was so extreme, that, shortly after an incident of molestation by [redacted] at the rectory, Plaintiff's brother, in a state of depression and confusion about religion and [redacted]'s continued abuse, experienced a psychotic break and engaged in an act of self-mutilation by severing his hand with a knife, in the belief that this act would ensure his entrance into heaven, literally hearing a voice in his head that kept repeating "if thy hand offends thee, cut it off." Plaintiff's brother was then taken to the ICU. Plaintiff went to the ICU to see his brother, and saw him in a hospital bed with his mutilated arm, a bandaged and bloody limb with a stump on the end, raised in traction, and saw the severed hand itself in a bucket of ice by the bed. Shortly thereafter, [redacted] came into the hospital room, and Plaintiff's brother, though heavily sedated, had an extreme negative reaction, clearly evidenced by the hospital monitors beeping urgent alerts, which caused the family to quickly remove [redacted] from the hospital room. Plaintiff realized that his brother also had been abused by [redacted]. Plaintiff, having now viewed this psychotic break and its disastrous effects, thereafter lived in fear that [redacted]'s abuse of Plaintiff would likewise cause Plaintiff to suffer a similar psychotic break with equally disastrous consequences.

27. [redacted]'s sexual abuse of Plaintiff constitutes "childhood sexual assault" pursuant to Code of Civil Procedure § 340.1(d).

28. [redacted]'s sexual assault of Plaintiff is a result of Defendants' cover up, as statutorily defined by Code of Civil Procedure § 340.1(b).

FIRST CAUSE OF ACTION

Negligence

(Against All Defendants)

29. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1-28 above as though fully set forth in this cause of action.

30. Defendants owed Plaintiff a duty to take all reasonable steps to protect him from sexual molestation and abuse by its priests.

31. Defendants, as institutions entrusted with the care of minors, where staff, employees, agents, and management, such as [redacted] were placed in contact with minor children, expressly and implicitly represented that these individuals, including [redacted], were not a threat to children and others who would fall under their influence, control, direction, and guidance.

32. Defendants were aware or had reason to have been aware of how vulnerable children were to sexual harassment, assault, and abuse by mentors, advisors, teachers, counselors and other persons of authority who worked for Defendants.

33. Plaintiff is informed and believes, and based thereon alleges, that Defendants breached their duty by failing to take sufficient steps to protect Plaintiff from molestation and abuse by [redacted] when Defendants knew or reasonably should have known that [redacted] posed a risk of sexually abusing Plaintiff.

34. As a proximate result of Defendants' conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained

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and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

SECOND CAUSE OF ACTION

Negligent Supervision and/or Retention

(Against All Defendants)

35. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in paragraphs 1-34 above as though fully set forth in this cause of action.

36. Defendants owed Plaintiff a duty to use due care in appointing, retaining, supervising, assigning and transferring its priests.

37. Defendants breached their respective duties to use due care by their appointment, retention and supervision of [redacted]. Defendants, by and through their respective agents, servants, and employees, knew or reasonably should have known of [redacted]'s dangerous and exploitive propensities and that [redacted] was an unfit agent to be placed regularly in situations in which minors would be in his charge. Despite such knowledge, Defendants negligently retained and/or failed to supervise [redacted] in his position of trust and authority as a priest, instructor and counselor of minor children at the Parish Church, in which capacity he was able to commit the acts of unlawful sexual abuse of Plaintiff alleged above. Defendants, inter alia, failed to use reasonable care in retaining [redacted] failed to provide reasonable supervision of [redacted], failed to use reasonable care in investigating [redacted], and failed to provide adequate warnings to Plaintiff and his family of [redacted]'s dangerous propensities and unfitness, with, on information and belief, little or no restrictions on [redacted]'s contact with minors, where, as a proximate result of Defendants' conduct, [redacted] was able to commit the acts of unlawful sexual abuse of Plaintiff alleged above.

38. As a proximate result of Defendants' conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained

and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

THIRD CAUSE OF ACTION

Sexual Battery

(Vicarious Liability by Authorization and Ratification)

(California Civil Code § 1708.5)

(Against All Defendants)

39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the Paragraphs 1-38 above as though fully set forth in this cause of action.

40. In doing the acts alleged above, [redacted] acted with the intent to cause a harmful and offensive contact with an intimate part or parts of Plaintiff's person.

41. At no time did Plaintiff, a minor, have the capacity to consent to [redacted]'s acts alleged above, nor did Plaintiff consent.

42. [redacted]'s conduct constituted unlawful sexual battery on Plaintiff, as proscribed by California Civil Code § 1708.5.

43. For the purpose of furthering his assigned duties as a parish priest and supervisor and counselor of minor parishioners, [redacted] identified Plaintiff as male child that he could sexually abuse. [redacted], through the position assigned to him by Defendants, then sought and gained Plaintiff's trust, friendship, admiration, obedience and dependence. As a result, Plaintiff was conditioned to comply with [redacted]'s direction and to look to him as an authority figure.

44. Using the power, authority and trust of his position as a parish priest, supervisor, spiritual counselor and authority figure to Plaintiff, [redacted] enticed, induced, directed and coerced Plaintiff to permit [redacted] to commit sexual battery of him.

45. But for [redacted]'s employment by Defendants, and Defendants holding out [redacted] to the community as a fit and competent agent of Defendants, [redacted] would not have been in a position to engage in the sexual battery of Plaintiff.

46. Defendants authorized and adopted [redacted]'s sexual battery of plaintiff, since Defendants had prior knowledge of improper sexual abuse of minors by [redacted], yet Defendants

nevertheless took no action to stop [redacted]'s conduct and continued to place [redacted] in a position where he had unsupervised access to minor children, and thus permitted [redacted] to engage in the sexual battery of Plaintiff, and by this conduct authorized and adopted [redacted]s actions towards Plaintiff.

47. Defendants ratified and adopted [redacted]'s sexual battery of plaintiff, since Defendants not only had prior knowledge of improper sexual abuse of minors by [redacted], but representatives of Defendants with a duty to report observed [redacted] acting inappropriately with Plaintiff, yet Defendants nevertheless took no action to stop [redacted]'s conduct nor to report his conduct, and thus Defendants ratified and adopted [redacted]'s actions towards Plaintiff.

48. Defendants ratified and authorized [redacted]'s childhood sexual abuse of Plaintiff by (1) failing to discharge, dismiss, discipline, suspend and/or supervise [redacted] even though he was known by Defendants to have been accused of sexually abusing children, (2) actively shielding [redacted] from responsibility for his childhood sexual assault of Plaintiff and other minors, (3) failing to acknowledge the existence of complaints against [redacted] of childhood sexual assault on minors, (4) failing to report such complaints to civil or criminal authorities, (5) providing financial support to [redacted] during and/or after the childhood sexual abuse of Plaintiff and/or other minors, and (6) failing to take steps to timely remove [redacted] from the priesthood so as to permanently prevent him from using his authority bestowed upon him by Defendants to gain access to minors and sexually abuse them.

49. As a proximate result of the conduct of Defendants, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

50. In performing the above-alleged acts, Defendants acted with oppression, fraud, or malice, or in conscious disregard of the rights of Plaintiff. Plaintiff is therefore entitled to the imposition of exemplary damages against Defendants. At this time, the Complaint does not alleged punitive damages against Defendants, but Plaintiff will seek an order authorizing the amending of this Complaint to add a claim for punitive damages pursuant to California Code of Civil Procedure § 425.14.

FOURTH CAUSE OF ACTION
Sexual Battery
(Vicarious Liability by Respondent Superior)
(California Civil Code § 1708.5)
(Against All Defendants)

51. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1-50 above as though fully set forth in this cause of action.

52. In doing the acts alleged above, [redacted] acted with the intent to cause a harmful and offensive contact with an intimate part or parts of Plaintiff's person.

53. At no time did Plaintiff, a minor, have the capacity to consent to [redacted]'s acts alleged above, nor did Plaintiff consent.

54. [redacted]'s conduct constituted unlawful sexual battery on Plaintiff, as proscribed by California Civil Code § 1708.5.

55. That [redacted] would consciously exploit his status, knowledge and power to coerce or trick Plaintiff into allowing sexual contact was a reasonably foreseeable risk of his employment based on Defendants' knowledge of [redacted]'s propensity to sexually abuse minor students and Defendants' specific knowledge of [redacted]'s dangerous and exploitive past behavior. Thus, Defendants are liable to Plaintiff for [redacted]'s acts of sexual abuse under the doctrine of respondeat superior.

56. As a proximate result of Defendants' conduct, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-

esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

57. In performing the above-alleged acts, Defendants acted with oppression, fraud, or malice, or in conscious disregard of the rights of Plaintiff. Plaintiff is therefore entitled to the imposition of exemplary damages against Defendants. At this time, the Complaint does not alleged punitive damages against Defendants, but Plaintiff will seek an order authorizing the amending of this Complaint to add a claim for punitive damages pursuant to California Code of Civil Procedure § 425.14.

FIFTH CAUSE OF ACTION
Aiding and Abetting Sexual Battery
(Violation of California Civil Code Section 1708.5)
(Against All Defendants)

58. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in Paragraphs 1-57 above as though fully set forth in this cause of action.

59. In doing the acts alleged above, [redacted] acted with the intent to cause a harmful and offensive contact with an intimate part or parts of Plaintiff's person.

60. At no time did Plaintiff, a minor, have the capacity to consent to [redacted]'s acts alleged above, nor did Plaintiff consent.

61. [redacted]'s conduct constituted unlawful sexual battery on Plaintiff, as proscribed by California Civil Code § 1708.5.

62. Defendants knew that [redacted]'s conduct was wrongful and that [redacted] would commit sexual battery, yet Defendants assisted and encouraged such conduct by, inter alia, allowing [redacted]'s unrestricted contact with minors such as Plaintiff, failing to supervise any such contact, placing [redacted] at the Parish Church with no notice to Plaintiff, his family or other parishioners of [redacted]'s illegal actions and dangerous proclivities, and retaining [redacted] despite

their actual knowledge of his illegal actions and proclivities.

63. As a proximate result of the conduct of Defendants, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

64. In performing the above-alleged acts, Defendants acted with oppression, fraud, or malice, or in conscious disregard of the rights of Plaintiff. Plaintiff is therefore entitled to the imposition of exemplary damages against Defendants. At this time, the Complaint does not alleged punitive damages against Defendants, but Plaintiff will seek an order authorizing the amending of this Complaint to add a claim for punitive damages pursuant to California Code of Civil Procedure § 425.14.

SIXTH CAUSE OF ACTION
Intentional Infliction of Emotional Distress
(Against All Defendants)

65. Plaintiff re-alleges and incorporates by reference each and every set forth in Paragraphs 1-64 above as though fully set forth in this cause of action.

66. At all relevant times, Defendants bore ultimate responsibility for ensuring the physical and emotional well-being of the minor parishioners at the Parish Church, by appointing, retaining and supervising all representatives and staff who provided services at the Parish Church, including [redacted], and particularly for ensuring the physical and emotional well-being of the children and adolescents entrusted into [redacted]'s care, including Plaintiff.

67. Defendants' conduct in assigning [redacted] to the Parish Church, concealing [redacted]'s deviant and dangerous proclivities from the parents of students at the Parish Church, and retaining and/or failing to remove [redacted] from the Parish Church, when Defendants knew or

reasonably should have known of [redacted]'s deviant and dangerous proclivities, left Plaintiff in harm's way.

68. Defendants' above-described conduct was extreme and outrageous and was done with the intention of causing, or reckless disregard of the probability of causing, Plaintiff to suffer severe and extreme emotional distress.

69. As a proximate result of the conduct of Defendants, Plaintiff has suffered, and will continue to suffer, great pain of mind and body, shock, emotional distress, abiding rage, lack of trust, acute anxiety, physical manifestations of emotional distress, embarrassment, loss of self-esteem, disgrace, humiliation, loss of enjoyment of life, difficulty in sustaining emotionally intimate relationships, and severe depression which constitutes a life-threatening illness; was and is prevented from performing his activities and obtaining the full enjoyment of life; has sustained and will continue to sustain loss of earnings and earning capacity; and has incurred and will continue to incur expenses for medical and psychological treatment, therapy, and counseling.

70. In performing the above-alleged acts, Defendants acted with oppression, fraud, or malice, or in conscious disregard of the rights of Plaintiff. Plaintiff is therefore entitled to the imposition of exemplary damages against Defendants. At this time, the Complaint does not alleged punitive damages against Defendants, but Plaintiff will seek an order authorizing the amending of this Complaint to add a claim for punitive damages pursuant to California Code of Civil Procedure § 425.14.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendants:

1. For damages for past and future medical, psychotherapy, and related expenses according to proof;

2. For general damages for physical and mental pain and suffering and emotional distress according to proof;

3. For damages for past loss wages and past earning capacity and/or future lost wages and loss of earning capacity according to proof;

4. For all costs and expenses;

5. For treble damages against Defendants, as authorized by the Code of Civil Procedure § 340.1(b);

6. For prejudgment interest at the maximum legal rate;

7. For such other and further relief as the Court may deem proper.

Dated: June 10, 2020

GROSS & BELSKY P.C.

By: */s/ Terry Gross*
Terry Gross

Attorneys for Plaintiff JOHN PM DOE

DEMAND FOR JURY TRIAL

Plaintiff, by their undersigned attorney, respectfully demands a jury trial on all issues so triable.

Dated: June 10, 2020

GROSS & BELSKY P.C.

By: */s/ Terry Gross*
Terry Gross

Attorneys for Plaintiff JOHN PM DOE

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EXHIBIT 3

FILED BY FAX
ALAMEDA COUNTY
November 06, 2020
CLERK OF
THE SUPERIOR COURT
By Joanne Downie, Deputy
CASE NUMBER:
RG20079359

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JANE DOE OK 1024, an individual Plaintiff, vs. DOE 1, a Corporation Sole; and DOES 2 through 100. Defendant(s).	Case No. **COMPLAINT FOR DAMAGES FOR CHILDHOOD SEXUAL ASSAULT** **[C.C.P. sec. 340.1]**

1. Plaintiff is a natural person who was a resident of the County of Alameda, State of California, at all relevant times mentioned herein. Plaintiff was born in [redacted]. Plaintiff was a minor throughout the period of childhood sexual assault alleged herein. Plaintiff appears by the fictitious name Jane Doe OK 1024 to protect her privacy because of the sensitive ad personal nature of the facts set forth herein. Defendants will be notified of the true name and identity of the Plaintiff at the time of service of Summons.

2. Defendant DOE 1, a corporation sole, is a civil corporation authorized to conduct business, incorporated in, and conducting business in the State of California, with its principal place of business in the City of Oakland, Alameda County, California. At all times herein, Defendant DOE 1 purposely conducted substantial business operations in and throughout the State of California and Alameda and Contra Costa Counties. Defendant DOE 1 is responsible for Roman Catholic Church operations in Alameda and Contra Costa Counties, California, and is responsible for the funding, staffing and direction of the parishes, parochial schools, fraternal organizations and other facilities and institutions within the geographic area of the Alameda and Contra Costa Counties. Defendant DOE 1 was the primary entity owning, operating and controlling the property and activities of its Diocese, including those programs, activities, and services conducted for or including minors. Defendant DOE 1 at all times herein supervised and controlled the activities and behavior of its employees and agents, including its priests, teachers administrators, and volunteers, and specifically including [redacted] (hereinafter "PERPETRATOR") PERPETRATOR was a priest hired, selected, trained, employed, and supervised by Defendant DOE 1. Defendant DOE 1 had sole authority and responsibility to control and supervise PERPETRATOR from at least 1972 through 1978.

3. During the time PERPETRATOR was a Priest employed by Defendant DOE 1, PERPETRATOR physically perpetrated acts of childhood sexual assault upon Plaintiff

when Plaintiff was a minor.

4. Between 1975 and 1978, Defendant DOE 1 assigned PERPETRATOR to serve as a priest at St. Joseph's of Pinole parish from 1972 to 1975, and then Our Lady of the Rosary parish from 1975 to 1978. Plaintiff and her family attended church, school, social and sports activities, at St. Joseph's of Pinole, and PERPETRATOR became acquainted with the family and her extended family, who resided in Pinole and were members of that parish. Between 1975 and 1978, PERPETRATOR repeatedly committed acts of childhood sexual assault upon Plaintiff during, before and after church related activities, on Defendant DOE 1's property, and in other locations where PERPETRATOR was in attendance as a member of the local Clergy and as a Priest who was a friend and counselor to the family.

5. Plaintiff is informed and believes and thereon alleges that the true names and capacities, whether individual, corporate, associate or otherwise, of Defendants named herein as Defendant DOE 2 through DOE 100, inclusive, are currently unknown to Plaintiff, who therefore sues DOE Defendants by such fictitious names, and who will amend the Complaint to show their true names and capacities when such names have been ascertained. Plaintiff is informed and believes and thereon alleges that DOE Defendants are 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.

6. Plaintiff is informed and believes and thereon alleges that at all times material hereto, Defendants were the agents, representatives and/or employees of each and every other Defendant and were acting within the course and scope of said alternative personality, capacity, identity, agency, representation and/or employment and were within the scope of their authority, whether actual or apparent. At all times material hereto, Defendants were the trustees, partners, servants, joint venturers, shareholders, co-

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conspirators, contractors, and/or employees of each and every other Defendant, and the acts and omissions alleged herein were done by them, acting individually, through such capacity and within the scope of their authority and with the permission and consent of each and every other Defendant, and that such conduct was thereafter ratified by each Defendant, and that each Defendant is jointly and severally liable to Plaintiff.

7. Plaintiff is informed and believes that PERPETRATOR was ordained a Roman Catholic priest in [redacted]. PERPETRATOR was employed by Defendant DOE 1 and remained under the direct supervision, employ, and control of Defendants, and each of them, until his arrest and conviction for acts of child abuse in 1979. Defendant DOE 1 assigned and employed PERPETRATOR to perform the services and functions of a Priest with actual and detailed knowledge of his propensity to sexually assault children of the church. Defendant DOE 1 placed PERPETRATOR in positions where he had access to and worked with children as an integral part of his work, and authorized him to interact with families and children both as part of official church activities and as a representative and counselor for the church in daily family social life. Defendant DOE 1 assigned PERPETRATOR these duties and responsibilities notwithstanding actual knowledge of his history of sexual assaults upon children, and withheld disclosure to parish members, the community, or to other employees of its knowledge of PERPETRATOR's history. By these acts and omissions, Defendant DOE 1 engaged in a cover up of PERPETRATOR's danger and threat to sexually assault children, including Plaintiff. The cover up was one of the causes of the subsequent childhood sexual assaults committed upon Plaintiff by PERPETRATOR.

8. Between 1972 and 1977, when Plaintiff was approximately [redacted] to [redacted] years old, Plaintiff was repeatedly sexually assaulted by PERPETRATOR on the premises owned, operated, and controlled by Defendant DOE 1, and during and before and after church and

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related social activities, while Plaintiff was in the custody and control of PERPETRATOR and of Defendant DOE 1.

9. Defendants, and each of them, were at all times herein negligent in the hiring, retention, control, and supervision of PERPETRATOR so as to allow him to repeatedly commit sexual assaults upon minors, including Plaintiff. Defendants, and each of them, were further negligent in failing to protect and supervise Plaintiff from sexual assaults by its Priest while Plaintiff was on its property and engaged in its activities and while PERPETRATOR was engaged in his duties and responsibilities of outreach as a Priest. Defendants, and each of them, further ratified PERPETRATOR's conduct of sexual assault against Plaintiff and other minors by continuing to retain him in their employment, and continuing to permit his access to minors, and in the 1980s assigning to the position of Youth Minister of St. Joseph's of Pinole parish. Defendant DOE 1 knew or had reason to know, or were otherwise on notice, that PERPETRATOR had engaged in misconduct and or unlawful sexual-related conduct with minors in the past, and/or was continuing to engage in such conduct with minors, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by PERPETRATOR.

10. As a direct and proximate result of PERPETRATOR's childhood sexual assault against Plaintiff, and the negligence of Defendants, and each of them, Plaintiff has suffered and will continue to suffer physical injury, psychological, emotional and economic harm in a sum to be proven at the time of trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief against Defendants:

1. For damages for past and future medical, psychotherapy, and related expenses according to proof at the time of trial;

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2. For general damages for the physical injury of sexual assault and mental pain and suffering and emotional distress in a sum to be proven at the time of trial;

3. For damages for past loss wages and past earning capacity and/or future lost wages and loss of earning capacity according to proof at the time of trial;

4. For treble damages against Defendant DOE 1, a corporation sole; as authorized by section 340.1 of the Code of Civil Procedure;

5. For interest as allowed by law;

6. For costs of suit herein; and

7. For such other and further relief as the Court deems proper.

DATED: November 4, 2020



RICHARD SIMONS SBN 72676
FURTADO, JASPOVICE & SIMONS

JEFF ANDERSON & ASSOCIATES
MICHAEL RECK
MICHAEL G. FINNEGAN
JOSEPH GEORGE, JR.
JENNIFER E. STEIN

Attorneys for Plaintiff Jane Doe OK 1024

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DEMAND FOR TRIAL

Plaintiff hereby demands a trial by jury in this matter.

DATED: November 4, 2020



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JOSEPH GEORGE, JR.
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EXHIBIT 4

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ATTORNEY FOR PLAINTIFF

ENDORSED
FILED
ALAMEDA COUNTY
SEP 22 2020
CLERK OF THE SUPERIOR COURT
By _____ Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JOHN DOE 660,

Plaintiff,

vs.

DOE 1, a California Corporation Sole; DOE 2, a religious entity form unknown; and DOES 3-100,

Defendants.

Case No.: RG20075018

COMPLAINT FOR DAMAGES AND DEMAND FOR JURY TRIAL

1. Negligence – Negligent Supervision, Negligent Retention
2. Negligence – Negligent Supervision of Plaintiff, Then a Minor

Filed Pursuant to Code of Civil Procedure Section 340.1, as amended by Assembly Bill 218

Plaintiff John Doe 660 ("Plaintiff"), for his cause of action against Defendants, alleges as follows:

PRELIMINARY ALLEGATIONS

1. Plaintiff is a citizen and resident of the State of California. The name utilized by Plaintiff in this Complaint is a fictitious name used to protect his privacy as a victim of childhood sexual assault as defined by section 340.1 of the Code of Civil Procedure. Plaintiff was born in [redacted]. Plaintiff was a minor throughout the period of childhood sexual assault alleged herein. Plaintiff brings this Complaint pursuant to the Code of Civil Procedure Section 340.1, as amended by Assembly Bill 218, for damages suffered as a result of childhood sexual assault.

2. Plaintiff is informed and believes and thereon alleges that at all times material hereto, Defendant DOE 1, which is a Roman Catholic Diocese, was and continues to be a Corporation Sole, which includes, but is not limited to, civil corporations, decision making entities, officials, and employees, authorized to conduct business, incorporated in, and conducting business in the State of

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Filed By Fax

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California, with its principal place of business at 2121 Harrison Street, Suite 100, Oakland, California 94612. Defendant DOE 1 purposely conducts substantial business operations in and throughout the State of California and the Counties of Alameda and Contra Costa. Defendant DOE 1 is responsible for Roman Catholic Church operations in the counties of Alameda and Contra Costa. DOE 1 is responsible for the funding, staffing and direction of the parishes, parochial schools, fraternal organizations and other facilities and institutions within the geographic area of the County of Alameda and the County of Contra Costa. Defendant DOE 1 was the primary entity owning, operating, and controlling the activities and behavior of its employees and agents at Defendant DOE 2, including [redacted] ("PERPETRATOR"), DOE 3 through DOE 100, and all other employees, agents and supervisors of Defendants. Plaintiff is further informed, believes and thereon alleges that Defendant DOE 1 had authority and responsibility to control and supervise the ministry of PERPETRATOR from the early 1940's until the early 1980's.

3. Plaintiff is informed and believes and thereon alleges that at all times material hereto, Defendant DOE 2 was and is a religious institution organized under the laws of the State of California as a religious entity of form unknown, which includes but is not limited to civil corporations, decision making entities, officials and employees authorized to conduct business and conducting business in the State of California, with its principle place of business at 322 St. James Drive, Piedmont, California 94611, in the County of Alameda. Defendant DOE 2 includes, but is not limited to, the Defendant DOE 2 organization and any other organizations and/or entities operating under the same or similar name with the same or similar principal place of business. At all times material, Defendant DOE 2 was and continues to be under the direct authority, control and province of Defendant DOE 1 and the Bishop. DOE 2 includes, but is not limited, to the school corporation and entity. Defendant DOE 2 is responsible for the funding, staffing, and direction of a Catholic school located at One Estates Drive, Piedmont, California 94611. At all times material, Defendant DOE 2 and Defendant DOE 1 owned, operated, managed, maintained and controlled Defendant DOE 2.

4. Plaintiff is informed and believes and thereon alleges that PERPETRATOR was a cleric with DOE l, DOE 2, and DOE 3 through DOE 100, and was assigned to DOE 2 between approximately the late 1970's and the early 1980's.

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5. At all times alleged herein, Defendants include any and all parents, subsidiaries, affiliates, divisions, franchises, partners, joint venturers, and organizational units of any kind, their predecessors, successors and assigns and their officers, directors, employees, agents, representatives, and any and all other persons acting on their behalf.

6. At all times alleged herein, Defendants were each the agent, servant, partner, aider and abettor, co-conspirator, and joint venturer of each other and were at all times operating and acting within the purpose and scope of said agency, service, employment, partnership, conspiracy and joint venture and rendered substantial assistance and encouragement to each other, knowing that their conduct constituted a breach of duty owed to Plaintiff.

7. There exists, and at all times herein alleged, there existed, a unity of interest in ownership between Defendants and other certain Defendants such that any individuality and separateness between the certain Defendants has ceased and these Defendants are the alter-ego of the other certain Defendants and exerted control over those Defendants. Adherence to the fiction of the separate existence of these certain Defendants as an entity distinct from other certain Defendants will permit an abuse of the corporate privilege and would sanction fraud and would promote injustice.

8. The true names or capacities, whether individual, corporate, or otherwise, of Defendants DOES 3-100, inclusive, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff believes and alleges that each of Defendants designated herein by fictitious names is in some manner legally responsible for the events and happenings herein referred to and caused damages proximately and foreseeably to Plaintiff as alleged herein.

9. While religious belief is absolutely protected, conduct is not protected and the actions herein below were illegal secular motivated conduct that is regulated by the law.

FACTUAL ALLEGATIONS

10. Plaintiff is informed and believes that PERPETRATOR was ordained a Roman Catholic priest in [redacted]. PERPETRATOR was employed by Defendants at DOE 2 in the late 1970's and early 1980's. PERPETRATOR remained under the direct supervision, employ, and control of Defendants. Defendants placed PERPETRATOR in positions where he had access to and worked with children as an integral part of his work.

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11. PERPETRATOR served as a priest and teacher at DOE 2 while under the direct supervision, employ, and control of Defendants. PERPETRATOR served the parishioners and community of Defendants.

12. PERPETRATOR is known to have sexually assaulted children, other than Plaintiff, prior to the time PERPETRATOR sexually assaulted Plaintiff.

13. In 1962, the Vatican in Rome issued a Papal Instruction binding upon all Bishops throughout the world, including the Bishop of DOE 1. The instruction was binding upon the Bishop of DOE 1 until 2001. The instruction directed that allegations and reports of childhood sexual abuse by priests were required to be kept secret and not disclosed either to civil authorities such as law enforcement, to co-employees or supervisors of parish priests, or to parishioners generally.

14. Defendant DOE 1's procedures require Bishops to keep *subsecreto* files also known as confidential files. These files are not to be made public.

15. Because of problems of sexual misconduct (including childhood sexual assault) of Catholic clergy, the Catholic Church and other organizations sponsored treatment centers for priests that had been involved in sexual misconduct. One such treatment center is the Saint John Vianney Center, (founded in 1946) represented on its public website that is/was "the longest running, internationally renowned, behavioral health facility in North America for Clergy and Religious." Similarly, a different treatment center, the Servants of the Paraclete represented that it "is an international religious community founded… in 1947 with a specific ministry to serve fellow priests and brothers who are facing particular challenge in their vocations and lives" with locations across the country, including in the states of Missouri and New Mexico. The Saint Luke Institute, is a third similar treatment provider for priest who engage in sexual misconduct and has treatment centers in Maryland, Kentucky, and Missouri.

16. Sexual abuse of minors by Catholic clergy has been a reality in the Catholic Church for centuries but has remained covered by deep secrecy. This secrecy is rooted in the official policies of the Catholic Church which are applicable to all dioceses and in fact are part of the practices of each diocese, including Defendant DOE 1. Sexual abuse of minors by Catholic clergy and religious leaders became publicly known in the mid-1980s as a result of media coverage of a case in Lafayette,

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Louisiana. Since that time, the media has continued to expose cases of clergy sexual abuse throughout the United States. In spite of these revelations, as well as the many criminal and civil litigations the Church has been involved in as a result of clergy sexual abuse of minors, the bishops and other Church leaders continued to pursue a policy of secrecy.

17. All of the procedures required in the so-called "Dallas Charter" have been previously mandated by Defendant DOE 1 and in the 1922 and 1962 documents, but were consistently ignored by Catholic Bishops. In place of the required processes, which would have kept a written record of cases of clergy sexual abuse, the Bishops applied a policy of clandestine transfer of accused priests from one local or diocesan assignment to another or from one diocese to another. The receiving parishioners and often the receiving pastors were not informed of any accusations of sexual abuse of minors.

18. Refusal to disclose sexually abusive clerics to parishioners and even fellow clerics has been one way utilized by Defendants to maintain secrecy. Another has been to use various forms of persuasion on victims or their families to convince them to remain silent about incidents of abuse. These forms of persuasion have included methods that have ranged from sympathetic attempts to gain silence to direct intimidation to various kinds of threats. In so doing, the clergy involved, from Bishops to priests, have relied on their power to overwhelm victims and their families.

19. Plaintiff was sexually assaulted by PERPETRATOR. PERPETRATOR'S childhood sexual assault of Plaintiff is a result of Defendants and DOES 3 through 100's cover up, as statutorily defined by Code of Civil Procedure section 340.1(b).

20. Plaintiff was raised in a devoutly Catholic family. When Plaintiff was a minor child, Plaintiff was a parishioner and student of DOE 2, which was owned, operated, controlled, and/or run by Defendants. Defendants' agents, including PERPETRATOR, were employed and assigned to work at DOE 2 within Defendant DOE 1. Plaintiff and Plaintiff's family came in contact with PERPETRATOR as an agent and representative of Defendants.

21. Plaintiff participated in youth activities, church activities, and educational activities at DOE 2. Plaintiff was educated and taught the theology and tenets of the Roman Catholic Church on matters of faith, morals, and religious doctrine. Plaintiff therefore developed great admiration, trust, reverence, respect for, and obedience to the Roman Catholic Church and clergy who occupied positions

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of great influence and persuasion as holy men and authority figures. Plaintiff was encouraged to trust, respect, and obey PERPETRATOR by and through Defendants and DOES 3 through 100.

22. As a minor, Plaintiff regularly participated in religious activities with priests employed by Defendants. Accordingly, a special relationship was formed between Plaintiff, then a minor, and Defendants. As delineated in California Evidence Code sections 1030-1034, codifying the clergymen-penitent privilege, the fact that a special relationship between Defendants and parishioners not only exists, but extents to nonspiritual matters.

23. During and through these activities, Plaintiff, as a minor and vulnerable child, was dependent on Defendants and their agents, including PERPETRATOR. Plaintiff was under the custody and control of Defendants who had control over Plaintiff's welfare and who were responsible for running DOE 2 with a duty to protect Plaintiff because he was in a special relationship with Defendants. Defendants had accepted the entrustment of Plaintiff and had responsibility for Plaintiff and authority over Plaintiff.

24. In the late 1980's, when Plaintiff was a minor and a parishioner and student of DOE 2, PERPETRATOR began committing acts of childhood sexual assault against Plaintiff – these acts of sexual abuse would continue for several years.

25. While performing the duties required in his role, PERPETRATOR befriended Plaintiff and gained Plaintiff's trust and confidence as a spiritual guide, authority figure, and trustworthy mentor.

26. Seeing PERPETRATOR as a trustworthy mentor, Plaintiff was conditioned to comply with PERPETRATOR'S direction and to respect him as a person of authority in spiritual, ethical, and educational matters. PERPETRATOR'S conduct constituted "grooming" of Plaintiff and culminated in his sexual assault and abuse of Plaintiff.

27. PERPETRATOR utilized Defendants' facilities and institutions to gain access to Plaintiff. At all relevant times, PERPETRATOR was referred to as "Father" and held himself out as a priest of Defendants. This signified to people that PERPETRATOR was in good standing and authorized by Defendants to act as a priest and agent of Defendants. It was by virtue of PERPETRATOR'S position as a priest of Defendants that he met and groomed Plaintiff, established trust with Plaintiff, and manipulated that trust in order to sexually assault and abuse Plaintiff.

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28. PERPETRATOR sexually molested, assaulted, and abused Plaintiff on the premises owned, operated, and/or controlled by Defendants. PERPETRATOR'S sexual abuse of Plaintiff included, but was not limited to: grooming, sexual touching, fondling, masturbation, and attempted anal sex.

29. PERPETRATOR sexually abused Plaintiff for sexual gratification and was, at least in part, based on the Plaintiff's gender and age, who was a minor child at the time.

30. This childhood sexual abuse constitutes "childhood sexual assault" pursuant to Code of Civil Procedure section 340.1(d) as amended by Assembly Bill 218, including any act committed against Plaintiff that occurred when the Plaintiff was under the age of 18 years and that would have been proscribed by Section 266j of the Penal Code; Section 285 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 286 of the Penal Code; subdivision (a) or (b) of Section 288 of the Penal Code; paragraph (1) or (2) of subdivision (b), or of subdivision (c), of Section 287 or of former Section 288a of the Penal Code; subdivision (h), (i), or (j) of Section 289 of the Penal Code; any sexual conduct as defined in paragraph (1) of subdivision (d) of Section 311.4 of the Penal Code; Section 647.6 of the Penal Code; and/or any prior laws of this state of similar effect at the time the act was committed.

31. Plaintiff did not, and was unable to give free or voluntary consent to the sexual acts perpetrated against Plaintiff by PERPETRATOR, as Plaintiff was a minor child at the time of the abuse alleged herein.

32. By using his position within Defendants' institutions, PERPETRATOR demanded and required that Plaintiff respect PERPETRATOR in his position as a priest, teacher, spiritual advisor, confidant, counselor and mentor for Defendants.

33. As a direct and proximate result of PERPETRATOR'S childhood sexual assault against Plaintiff, which was enabled and facilitated by Defendants, and each of them, Plaintiff has suffered and will continue to suffer physical, psychological, emotional and economic harm in a sum to be proven at the time of trial.

34. As a direct and proximate result of Plaintiff's sexual abuse by PERPETRATOR, which was enabled and facilitated by Defendants, and each of them, Plaintiff has suffered economic injury,

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all to Plaintiff's general, special and consequential damage in an amount to be proven at trial, but in no event less than the minimum jurisdictional amount of this Court.

35. PERPETRATOR at all times material hereto was an employee, agent, and/or representative of Defendants. PERPETRATOR engaged in unlawful sexual conduct with Plaintiff when Plaintiff was a minor. Defendants are vicariously liable for the childhood sexual abuse committed by PERPETRATOR, including, but not limited to, through the theories of respondent superior, ratification, and authorization. PERPETRATOR'S childhood sexual misconduct with Plaintiff occurred while he was functioning on behalf of Defendants, and was made possible because of that agency.

36. Under Church protocol and practice, in return for the vow of obedience by a priest, the Bishop accepts responsibility for the care and welfare of a priest as well as to supervise the priest's ministry. A priest may not engage in any form of public ministry without the permission of his Bishop. By allowing a priest to engage in public ministry, such as by allowing him to wear his religious/priestly attire and hold himself out as a priest, the Bishop is certifying that the priest is in good standing and sexually safe.

37. Defendants ratified and authorized PERPETRATOR'S childhood sexual abuse of Plaintiff by (1) failing to discharge, dismiss, discipline, suspend, and/or supervise PERPETRATOR or other priests known by Defendants to have sexually abused children, or to have been accused of sexually abusing children, (2) actively shielding PERPETRATOR from responsibility for his childhood sexual assault of Plaintiff and other minors, (3) failing to acknowledge the existence of complaints against PERPETRATOR of childhood sexual assault on Plaintiff and minors, (4) failing to report such complaints to civil or criminal authorities, (5) providing financial support to PERPETRATOR during and/or after the childhood sexual abuse of Plaintiff and/or other minors, and (6) failing to take steps to timely remove PERPETRATOR from the priesthood so as to permanently prevent him from using his authority bestowed upon him by Defendants to gain access to minors and sexually abuse them.

38. By taking the above wrongful, negligent, and/or intentional actions and/or failing to act after having knowledge or having reason to know of such childhood sexual abuse of Plaintiff and/or other minors, Defendants ratified and authorized PERPETRATOR'S sexual abuse of minors. By

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ratifying PERPETRATOR'S sexual abuse of minors, Defendants in legal effect committed and caused the childhood sexual abuse of Plaintiff when Plaintiff was a minor.

39. Defendants have failed to uphold numerous mandatory duties imposed upon them by state and federal law, and by written policies and procedures applicable to Defendants.

40. As a minor at DOE 2, which was owned, operated, and/or controlled by the Defendants, and where PERPETRATOR was employed, retained, and worked, Plaintiff was under Defendants' direct supervision, care, and control. This constituted a special relationship, fiduciary relationship, and/or special care relationship between Plaintiff and Defendants. Additionally, as a minor child under the custody, care, and control of Defendants, Defendants stood in *loco parentis* with respect to Plaintiff while Plaintiff was at DOE 2. As the responsible parties and/or employers controlling PERPETRATOR, Defendants were also in a special relationship with Plaintiff, and owed special duties to Plaintiff.

41. Defendants knew or had reason to know, or were otherwise on notice, that PERPETRATOR had engaged in unlawful sexual-related conduct with minors in the past, and/or was continuing to engage in such conduct with Plaintiff, and failed to take reasonable steps, and to implement reasonable safeguards, to avoid acts of unlawful sexual conduct in the future by PERPETRATOR.

42. Defendants had a duty to disclose these facts to Plaintiff, Plaintiff's parents, and others, but negligently and/or intentionally suppressed, concealed, or failed to disclose this information for the express purposes of maintaining PERPETRATOR'S image as an ethical, wholesome, safe, and trusted spiritual leader at and within the institution run by the Defendants. The duty to disclose this information arose from the special, trusting, confidential, fiduciary, and in *loco parentis* relationship between Defendants and Plaintiff.

43. Instead, Defendants ignored and/or concealed the childhood sexual abuse of Plaintiff and others by PERPETRATOR and continued to allow numerous children, including Plaintiff, to be in private, secluded areas with PERPETRATOR, despite knowledge of or reasons to suspect PERPETRATOR'S prior sexually abusive acts toward minors.

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44. Plaintiff is informed, believes, and thereon alleges that Defendants were given notice of inappropriate conduct committed by PERPETRATOR, including the facts alleged herein.

45. Defendants failed to report and hid and concealed from Plaintiff, Plaintiff's parents, other minor children in their care and their parents, law enforcement authorities, civil authorities, and others, the true facts and relevant information necessary to bring PERPETRATOR to justice for the sexual misconduct he committed with minors and to protect those entrusted in their care, including Plaintiff.

46. During the period of abuse of Plaintiff at the hands of PERPETRATOR, Defendants had the authority and ability to stop PERPETRATOR'S childhood sexual assault of Plaintiff, but negligently and/or willfully failed to do so, thereby allowing the abuse to occur and continue unabated. This failure was part of Defendants' plan and arrangement to conceal wrongful acts, to avoid or interfere with detections, to block public disclosure, to avoid scandal, to avoid disclosure of their tolerance of childhood sexual abuse, to preserve a false appearance of propriety, and to avoid investigation and action by public authority, including law enforcement.

47. At the time of PERPETRATOR's childhood sexual assault of Plaintiff, as defined by Code of Civil Procedure section 340.1(d), Defendants knew or had reason to know, or were otherwise on notice of prior acts of childhood sexual abuse committed by PERPETRATOR, and despite such knowledge and/or notice, failed to take reasonable steps or implement reasonable safeguards to protect Plaintiff from childhood sexual abuse. These acts and/or omissions on the part of Defendants were committed in spite of their ability to exercise control over the personal and business affairs of PERPETRATOR. Accordingly, Defendants are liable for PERPETRATOR's childhood sexual assault of Plaintiff in that their wrongful, intentional, and/or negligent acts were a legal cause of Plaintiff's sexual assault.

FIRST CAUSE OF ACTION: NEGLIGENCE

(Against all Defendants and DOES 3-100)

48. Plaintiff realleges and incorporates herein by reference each of the foregoing paragraphs of this Complaint as though fully set forth herein.

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49. Defendants' conduct, actions, and omissions served to create an environment in which PERPETRATOR was afforded years of continuous secluded access to minor children, including Plaintiff, who was a minor at the time PERPETRATOR committed acts of childhood sexual assault against Plaintiff.

50. At the time PERPETRATOR performed the acts alleged herein, it was or should have been reasonably foreseeable to Defendants that by continuously exposing and making Plaintiff available to PERPETRATOR, Defendants were placing Plaintiff at grave risk of being sexually assaulted by PERPETRATOR. By knowingly subjecting Plaintiff to this foreseeable danger, Defendants were duty-bound to take reasonable steps and implement reasonable safeguards to protect Plaintiff from PERPETRATOR. Further, at all times alleged herein, Defendants possessed a sufficient degree of control over PERPETRATOR's personal and business affairs so as to keep PERPETRATOR away from Plaintiff and other minor children, and prevent any childhood sexual assault against them. Defendants, however, failed to take reasonable steps or implement reasonable safeguards for Plaintiff's protection.

51. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered and will continue to suffer physical, psychological, emotional, and economic harm in a sum to be proven at the time of trial.

NEGLIGENT SUPERVISION OF PERPETRATOR

52. Defendants owed Plaintiff a duty to provide reasonable supervision over PERPETRATOR, to use reasonable care in investigating PERPETRATOR's background, and to provide adequate warning to the Plaintiff, and others, of PERPETRATOR's dangerous propensities.

53. Defendants, by and through their respective agents, servants and employees, knew or had reason to know of PERPETRATOR's dangerous and exploitive propensities. Despite such knowledge, Defendants negligently failed to supervise PERPETRATOR, a supervisor of minor children with the propensity and ability to commit wrongful acts against Plaintiff. Defendants failed to provide reasonable supervisions of PERPETRATOR, failed to use reasonable care in investigating PERPETRATOR, and failed to provide adequate warning to Plaintiff and others of PERPETRATOR's

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dangerous propensities and unfitness. Defendants further failed to take reasonable measures to prevent the childhood sexual assault, abuse, and harassment of minor children, including Plaintiff.

54. As institutions entrusted with the care of minors, where staff, employees, agents, and management, such as PERPETRATOR, were placed in contact with minor children, Defendants expressly and implicitly represented that these individuals, including PERPETRATOR, were not a threat to children and others who would fall under PERPETRATOR's influence, control, direction, and guidance.

55. Defendants were aware or had reason to have been aware of how vulnerable children were to sexual harassment, assault, and abuse by mentors, clerics, advisors, teachers, counselors and other persons of authority within Defendants.

56. Defendants breached their duty to Plaintiff by, *inter alia*, failing to adequately monitor and supervise PERPETRATOR and failing to stop PERPETRATOR from committing wrongful sexual acts with minors, including Plaintiff. Plaintiff is informed and believes that employees, staff, and agents of Defendants knew and/or suspected the abuse was occurring at the time and failed to investigate the matter further.

57. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered and will continue to suffer physical, psychological, emotional, and economic harm in a sum to be proven at the time of trial.

NEGLIGENT RETENTION OF PERPETRATOR

58. Defendants owed Plaintiff a duty not to retain PERPETRATOR given his pedophile propensities, which Defendants knew or had reason to know had they engaged in a meaningful and adequate investigation of his background.

59. As institutions entrusted with the care of minors, where staff, employees, agents and management, such as PERPETRATOR were placed in contact with minors, Defendants expressly and implicitly represented that these individuals, including PERPETRATOR, were not a sexual threat to children and others who would fall under PERPETRATOR's influence, control, direction and guidance.

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60. Nevertheless, although Defendants knew or had reason to know, suspect, or otherwise had been on notice that PERPETRATOR was a pedophile, that he had sexually assaulted other minors, that PERPETRATOR was and had sexually assaulted Plaintiff, Defendants refused to defrock PERPETRATOR and/or report him to law enforcement.

61. As a direct and proximate result of Defendants' acts and omissions, Plaintiff has suffered and will continue to suffer physical, psychological, emotional, and economic harm in a sum to be proven at the time of trial.

SECOND CAUSE OF ACTION: NEGLIGENCE

(Against all Defendants and Does 3-100)

NEGLIGENT SUPERVISION OF PLAINTIFF, THEN A MINOR

62. Plaintiff realleges and incorporates herein by reference each of the foregoing paragraphs of this Complaint as though fully set forth herein.

63. Plaintiff's Second Cause of action is an alternative additional theory of liability as alleged as against Defendants and DOES 3 through 100.

64. Defendants and DOES 3 through 100 are liable for the acts and omissions of their employees and agents, including PERPETRATOR, acting within the course and scope of their employment and/or agency. At all times herein, Defendants and DOES 3 through 100's employees, including PERPETRATOR, were acting within the course and scope of their employment.

65. Defendants and DOES 3 through 100 had a duty to provide supervision of Plaintiff, a minor, and to use reasonable care in supervising Plaintiff, a minor, when Plaintiff was involved in activities sponsored, supervised, organized, directed, and/or operated by Defendants and DOES 3 through 100, or their agents and employees.

66. Defendants and DOES 3 through 100 breached their duty of care.

67. Defendants and DOES 3 through 100 negligently failed to properly and/or adequately supervise Plaintiff, a minor, and failed to use reasonable care in protecting Plaintiff, a minor, from PERPETRATOR's misconduct that created a risk of childhood sexual assault while Plaintiff, a minor, was involved in activities sponsored, supervised, organized, directed, and/or operated by Defendants and DOES 3 through 100's and their agents and/or employees.

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68. Defendants and DOES 3 through 100's breach was a substantial factor in PERPETRATOR's childhood sexual assault of Plaintiff.

69. As a direct, legal, and proximate cause of Defendants and DOES 3 through 100's acts, omissions and/or negligence, PERPETRATOR committed acts of childhood sexual assault against Plaintiff.

70. As a direct and proximate result of Defendants' acts and omissions Plaintiff has suffered and will continue to suffer physical, psychological, emotional and economic harm in a sum to be proven at the time of trial.

RELIEF REQUESTED

71. WHEREFORE, Plaintiff prays for judgment against Defendants and DOES 3-100, jointly and severally, and as appropriate to each cause of action alleged, as follows:

a. Past and future general damages, the exact amount of which has yet to be ascertained, in an amount which will conform to proof at time of trial;

b. For damages for past and future medical, psychotherapy, and related expenses according to proof at the time of trial;

c. For general damages for physical and mental pain and suffering and emotional distress in a sum to be proven at the time of trial;

d. For damages for past loss wages and past earning capacity and/or future lost wages and loss of earning capacity according to proof at the time of trial;

e. For treble damages against Defendants as authorized by section 340.1 of the Code of Civil Procedure, as amended by Assembly Bill 218;

f. For interest as allowed by law;

g. For costs of suit herein; and

h. For such other and further relief as the Court deems proper.

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MATTHEWS & ASSOCIATES
CHICO, CALIFORNIA

Dated: September 22, 2020

Respectfully submitted,

MATTHEWS & ASSOCIATES

By: _____

Pedro "Peter" de la Cerda (SBN 249085)
pdelacerda@thematthewslawfirm.com
MATTHEWS & ASSOCIATES
250 Vallombrosa Ave., Ste. 266
Chico, CA 95926
P: 530.212.8345
F: 530.433.5677

ATTORNEY FOR PLAINTIFF

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all counts in this Complaint.

Dated: September 22, 2020

Respectfully submitted,

MATTHEWS & ASSOCIATES

By: _____

Pedro "Peter" de la Cerda (SBN 249085)

MATTHEWS & ASSOCIATES
CHICO, CALIFORNIA

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EXHIBIT 5

CHUBB®

Chubb
10 Exchange Place
Jersey City, NJ 07302

O (201) 356-5195
M (201) 370-5577
E: jennifer.capone@chubb.com

January 24, 2024

VIA EMAIL
Diocese of Oakland
c/o Eileen R. Ridley
Foley & Lardner LLP
555 California Street, Suite 1700
San Francisco, CA 94104
eridley@foley.com

RESERVATION OF RIGHTS

Re:	**Insured:**	Roman Catholic Bishop of Oakland
	Insurer:	Pacific Indemnity Company Insurance Company of North America
	Policies:	LAC127792, LAC155598, CP26786, and XBC24312
	Claimants:	See Exhibit A

Dear Ms. Ridley:

On behalf of Pacific Indemnity Company ("Pacific Indemnity") and Insurance Company of North America ("INA"), this letter is addressed to you as the authorized representative of the Roman Catholic Bishop of Oakland ("Diocese of Oakland") with respect to your correspondence providing notice of claims against the Diocese of Oakland as identified in Exhibit A (the "*Tendered Claims*"). It is Pacific Indemnity's and INA's understanding that the Diocese of Oakland is seeking coverage only under the policy(ies) in effect during the dates when the alleged physical abuse purportedly took place, and not under any policies that were allegedly issued prior to or after those dates. The purpose of this omnibus letter is to address all claims alleging abuse within the policy periods of Pacific Indemnity policy no. LAC 127792, effective October 25, 1960 to October 25, 1963, Pacific Indemnity policy no. LAC 155598, effective October 25, 1963 to October 25, 1966, INA policy no. CP 26786, effective October 25, 1966 to October 25, 1969, and INA policy no. XBC 24312, effective October 25, 1966 to October 25, 1969, and listed in Exhibit A.

The purpose of this letter is to: (1) set forth Pacific Indemnity's and INA's reservation of rights under the policies discussed below; (2) advise the Diocese of Oakland that Pacific Indemnity and INA will agree to defend the Diocese of Oakland with respect to the *Tendered Claims* identified in Exhibit A under the Primary Policies (as defined below), subject to the reservations discussed herein, and subject to the automatic stay given Diocese of Oakland's filing of bankruptcy; (3) advise the Diocese of Oakland that Pacific Indemnity and INA cannot accept the tender of indemnity at this time; and (4) request additional information, as set forth below.

Please note, when the Diocese of Oakland filed for bankruptcy, the bankruptcy stay went into effect which stayed litigation against the Diocese of Oakland and stopped the incurring of defense fees and expenses. Pacific Indemnity and INA understand that after the Diocese filed bankruptcy,

it then filed notice of the bankruptcy stay in the abuse cases through the JCCP 5108 lead case, which was served on all plaintiffs' counsel firms by electronic service, and in other non-abuse cases not included in the JCCP 5108 process.

Because the allegations of the *Tendered Claims* give rise to circumstances where the provisions of Civil Code § 2860 may apply, if Diocese of Oakland chooses, Pacific Indemnity and INA will agree to permit Diocese of Oakland to continue to be represented by its independent counsel Foley & Lardner LLP, provided however, that Pacific Indemnity's and INA's agreement to do so is subject to the conditions set forth in the July 14, 2022 Negotiated Rate Agreement, the provisions of Civil Code § 2860, and this letter, including rates[1] and billing conditions. Please let us know promptly if Diocese of Oakland wishes to exercise its right to be represented by independent counsel of its choice, or whether you wish to waive that right, pursuant to Civil Code § 2860(e), which provides as follows:

> The insured may waive its right to select independent counsel by signing the following statement: "I have been advised and informed of my right to select independent counsel to represent me in this lawsuit. I have considered this matter fully and freely waive my right to select independent counsel at this time. I authorize my insurer to select a defense attorney to represent me in this lawsuit."

Should Diocese of Oakland agree to waive its right to independent counsel, Pacific Indemnity and INA request that Diocese of Oakland acknowledge its agreement to do so by signing the statement (which is required under California Civil Code Section 2860(e)) set forth at the end of this letter. Please return the signed statement to the undersigned. Diocese of Oakland may wish to consult with counsel prior to signing the attached waiver.

If Diocese of Oakland chooses to be represented by independent counsel, Pacific Indemnity and INA will exercise their rights under Civil Code § 2860(c), which provides:

> When the insured has selected independent counsel to represent him or her, the insurer may exercise its right to require that the counsel selected by the insured possess certain minimum qualifications which may include that the selected counsel have (1) at least five years of civil litigation practice which includes substantial defense experience in the subject at issue in the litigation, and (2) errors and omissions coverage. The insurer's obligation to pay fees to the independent counsel selected by the insured is limited to the rates which are actually paid by the insurer to attorneys retained by it in the ordinary course of business in the defense of similar actions in the community where the claim arose or is being defended. This subdivision does not invalidate other different or additional policy provisions pertaining to attorney's fees or providing for methods of settlement of disputes concerning those fees. Any dispute concerning attorney's fees not resolved

[1] Partners ([redacted]), Associates ([redacted]), and Paralegals ([redacted]).

> by these methods shall be resolved by final and binding arbitration by a single neutral arbitrator selected by the parties to the dispute.

If Diocese of Oakland chooses to be represented by independent counsel, Pacific Indemnity and INA will also require compliance with Civil Code § 2860(d), which provides:

> When independent counsel has been selected by the insured, it shall be the duty of that counsel and the insured to disclose to the insurer all information concerning the action except privileged materials relevant to coverage disputes, and timely to inform and consult with the insurer on all matters relating to the action. Any claim of privilege asserted is subject to in camera review in the appropriate law and motion department of the superior court. Any information disclosed by the insured or by independent counsel is not a waiver of the privilege as to any other party.

Furthermore, Civil Code § 2860(f) provides:

> Where the insured selects independent counsel pursuant to the provisions of this section, both the counsel provided by the insurer and independent counsel selected by the insured shall be allowed to participate in all aspects of the litigation. Counsel shall cooperate fully in the exchange of information that is consistent with each counsel's ethical and legal obligation to the insured. Nothing in this section shall relieve the insured of his or her duty to cooperate with the insurer under the terms of the insurance contract.

The following explains in more detail the basis for Pacific Indemnity's and INA's reservation of rights and its positions concerning coverage.

POLICY SEARCH

Based on the available documentation, the Diocese of Oakland is an insured under the following policies which were in effect during the potential dates of abuse as alleged by claimants identified in Exhibit A:

- Pacific Indemnity Company Comprehensive Liability Policy no. LAC 127792 effective from October 25, 1960 to October 25, 1963 (the "1960-1963 Pacific Indemnity Primary Policy");

- Pacific Indemnity Company Comprehensive Liability Policy no. LAC 155598 effective from October 25, 1963 to October 25, 1966 (the "1963-1966 Pacific Indemnity Primary Policy");

- Insurance Company of North America Comprehensive General Liability and Comprehensive Automobile Liability policy no. CP 26786, effective from October 25, 1966 to October 25, 1969 (the "1966-1969 INA Primary Policy");[2] and

- Insurance Company of North America Excess policy no. XBC 24312 (the "1966-1969 INA Excess Policy").

The Primary Policies and the 1966-1969 INA Excess Policy are collectively referred to herein as the "Policies." Kindly refer to the above-mentioned Policies for the complete terms and conditions. If you have other policies that you allege were in effect at the time of the alleged abuse, we ask that you provide us with the copies of the purported policies. No other policy aside from the Policies listed above have been considered.

Since Pacific Indemnity and INA could not locate complete copies of the Policies, Pacific Indemnity and INA further conducted a search for specimen forms. Pacific Indemnity and INA located specimen form K248, which is the form insuring agreement for CP prefixed policies issued during the alleged policy period, and specimen form LC752-1, which is the form insuring agreement for XBC prefixed policies issued during the alleged policy period. Pacific Indemnity and INA have previously provided you copies of the specimen forms for your reference.

Please be advised that Pacific Indemnity and INA reserve the right to rely upon terms and provisions of the Policies which are not included in this letter in support of their coverage determination. Pacific Indemnity's and INA's coverage position is set forth below.

FACTUAL ALLEGATIONS

Pacific Indemnity and INA recognize that the *Tendered Claims* listed in Exhibit A consist of unsubstantiated allegations. By summarizing the allegations, Pacific Indemnity and INA do not imply that we believe the allegations asserted against the Diocese of Oakland are true or that the claims are meritorious.

Claimants in the *Tendered Claims* listed in Exhibit A allege abuse by certain clergy, employees and/or agents of the Diocese of Oakland. The specific dates of alleged abuse and the identity of the alleged perpetrators are set forth in Exhibit A.

Claimants generally claim that the Diocese of Oakland knew or should have known that certain clergy, employees and/or agents of the Diocese of Oakland were unfit and posed a risk of harm to minor children, and was aware of the conduct of certain clergy, employees and/or agents. Claimants claim that the Diocese of Oakland intentionally and willfully implemented various measures intended and designed to make, or which effectively made, the conduct of certain clergy, employees and/or agents of the Diocese of Oakland harder to detect. Claimants allege that the

[2] Together the 1960-1963 Pacific Indemnity Primary Policy, the 1963-1966 Pacific Indemnity Primary Policy, and the 1966-1969 INA Primary Policy are collectively referred to herein as the "Primary Policies."

Diocese of Oakland was negligent in the hiring, retention, and supervision of certain clergy, employees and/or agents of the Diocese of Oakland. Claimants allege that the Diocese of Oakland breached its duty to take reasonable protective measures to protect Claimants from the risk of sexual assault, harassment, and molestation, and failed to properly warn, train, or educate Claimants about how to avoid such a risk.

Claimants request past, present, and future general and special damages, including but not limited to past, present, and future lost earnings, economic damages, and any appropriate statutory damages, including attorneys' fees, pre- and post-judgment interest, and costs of suit.

COVERAGE ANALYSIS

As an initial matter, it is the insured's burden to establish the material terms and conditions of the Policies, as required by applicable law. Pacific Indemnity and INA therefore reserve all rights, claims and defenses in these matters to decline coverage on the basis that the Policies are lost or otherwise missing, and the Diocese of Oakland has not met its burden of establishing the material terms and conditions of the Policies. Pacific Indemnity and INA further reserve all rights, claims and defenses in these matters whether under the Policies, at law or in equity and, further, nothing herein shall be deemed or otherwise constitute a waiver or estoppel of any of Pacific Indemnity's or INA's rights, claims or defenses. Pacific Indemnity and INA also reserve their rights to supplement this coverage position as appropriate.

If Pacific Indemnity or INA are able to locate copies of the Policies or the Diocese of Oakland is able to prove the material terms and conditions of the Policies, coverage would only be available for any alleged personal injury that occurs within the policy period of the Policies. Any alleged personal injury taking place outside the effective dates of coverage would therefore not be covered. Pacific Indemnity and INA therefore disclaim coverage under all policies that were not in effect during the pertinent period of abuse as alleged by claimants identified in Exhibit A.

Please note, the Policies may have been exhausted through the settlement of claims in connection with prior litigation involving the Diocese of Oakland. Pacific Indemnity and INA therefore reserve their rights to the extent the Policies are exhausted, and they have no further defense or indemnity obligations under the Policies. Pacific Indemnity and INA also reserve their rights to the extent that limits are reduced in connection with settlement of prior claims.

The Primary Policies

The 1960-1963 Pacific Indemnity Primary Policy

Pacific Indemnity's right and duty to defend is limited to suits against the insured which seek damages to which the 1960-1963 Pacific Indemnity Primary Policy applies. Specifically, the 1960-1963 Pacific Indemnity Primary Policy provides that Pacific Indemnity shall "defend any suit against the Insured alleging such injury, sickness, disease, or destruction and seeking damages on account thereof, even if such suit is groundless, false, or fraudulent, but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient."

The 1960-1963 Pacific Indemnity Primary Policy was issued to "The Roman Catholic Archbishop of San Francisco, a Corporation Sole, Et Al." Pursuant to Endorsement No. 1, the named insured includes "The Roman Catholic Archbishop of San Francisco, a Corporation Sole, Et Al." and "all other corporations, companies, organizations, and/or other entities which are under the direct control and jurisdiction of the Roman Catholic Archbishop of San Francisco, a Corporation Sole." Pacific Indemnity understands that the Diocese of Oakland was under the "direct control and jurisdiction" of the Roman Catholic Archbishop of San Francisco until January 13, 1962. If Pacific Indemnity is incorrect about its understanding, please inform us as soon as possible. Based on the foregoing, the Diocese of Oakland qualifies as an insured under the 1960-1963 Pacific Indemnity Primary Policy for the duration in which it was under the "direct control and jurisdiction" of the Roman Catholic Archbishop of San Francisco. To the extent that the alleged abuse did not occur from October 25, 1960 to January 13, 1962, Pacific Indemnity declines coverage.

Under the 1960-1963 Pacific Indemnity Primary Policy, the insuring agreement of Coverage A – Bodily Injury Liability provides that Pacific Indemnity will "pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by any person." "Bodily injury" is not defined. Should it be determined that the 1960-1963 Pacific Indemnity Primary Policy provides coverage for "bodily injury" liability, emotional distress without any physical injury may not constitute "bodily injury." Therefore, to the extent emotional distress is alleged without any physical injury, there may be no coverage. To the extent the Diocese of Oakland is not liable for damages as a result of "bodily injury," there would be no coverage.

The 1960-1963 Pacific Indemnity Primary Policy "applies only to accidents or occurrences during the policy period." The 1960-1963 Pacific Indemnity Primary Policy does not define "occurrence." "Occurrence" is typically defined as "either an accident happening during the coverage period or a continuous or repeated exposure to conditions which unexpectedly and unintentionally causes personal injury or injury to or destruction of tangible property during the coverage period." The term "accident" as used in liability policies has been defined as a sudden, unexpected or undesigned happening or consequence from either a known or unknown cause. An accident is not present when the insured performs a deliberate act and accordingly there is no coverage. To the extent the Diocese of Oakland's conduct was not "accidental," the "accident" or "occurrence" requirement would not be met, and there would be no coverage under the 1960-1963 Pacific Indemnity Primary Policy. Further, to the extent the evidence demonstrates that the Diocese of Oakland "expected or intended" injury to the subject claimant, coverage will be barred. In addition, the prior settlement agreement entered into by the Diocese of Oakland involving the Polices, provides that "'Abuse claims' means all claims by persons who have sought or who the RCBO reasonably should have concluded were seeking monetary compensation or damages from the beginning of time to the Effective Date" or "known of prior to the Effective Date by priests, deacons, or seminarians, or other alleged employees, officers, agents, volunteers or representatives of the RCBO who are responsible for resolving or investigating such claims or providing notice of such claims." Thus, to the extent that the Diocese of Oakland knew of any of the abuse alleged by claimants prior to the effective date of the settlement agreement, Pacific Indemnity reserves the right to deny coverage to the extent that any of the claims were released as part of the settlement.

To the extent that Diocese of Oakland or any of the alleged perpetrators allege that the perpetrators are insured, there is no coverage, as their alleged conduct, as well as the allegations asserted against them, arise from expected or intentional conduct and injury, which does not constitute an accident or occurrence under the 1960-1963 Pacific Indemnity Primary Policy, and is also excluded as uninsurable willful conduct pursuant to California Insurance Code § 533. As a result, Pacific Indemnity denies coverage for any and all claims against the alleged perpetrators.

The 1960-1963 Pacific Indemnity Primary Policy limits Pacific Indemnity's liability as follows, "[t]he limit of bodily injury liability stated in the declarations as applicable to 'each person' is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one occurrence; the limit of such liability stated in the declarations as applicable to 'each occurrence' is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one occurrence." To the extent a claimant alleges multiple instances of abuse, Pacific Indemnity reserves its right to assert the above-stated limit of liability. Pacific Indemnity also reserves its rights to determine the number of claim(s) and/or occurrence(s) that exist in this matter, if any.

Pacific Indemnity will only provide coverage for sums that the insured becomes legally obligated to pay as "damages" because of "bodily injury." As such, Pacific Indemnity reserves rights to deny coverage under the 1960-1963 Pacific Indemnity Primary Policy for any amounts that do not constitute "damages" or are uninsurable pursuant to applicable law.

The 1960-1963 Pacific Indemnity Primary Policy includes various conditions that the Diocese of Oakland must meet in order to be entitled to coverage. Such conditions require that the Diocese of Oakland cooperate with Pacific Indemnity in connection with the claims at issue and also prohibit the Diocese of Oakland from making any voluntary payments or assuming any liabilities without Pacific Indemnity's prior consent. To the extent the Diocese of Oakland breached any notice provision contained in the 1960-1963 Pacific Indemnity Primary Policy, there is no coverage. Pacific Indemnity reserves its rights to deny coverage to the extent any of these conditions is violated.

The 1960-1963 Pacific Indemnity Primary Policy may also bar coverage for any claim against the Diocese of Oakland for punitive or exemplary damages, statutory penalties, fines, or other punitive remedies. As such, Pacific Indemnity reserves rights to deny coverage under the 1960-1963 Pacific Indemnity Primary Policy for any amounts that are uninsurable pursuant to applicable law.

The 1960-1963 Pacific Indemnity Primary Policy may also contain additional exclusions that exclude coverage for damages arising out of sexual abuse. Pacific Indemnity reserves its rights to refuse to defend or indemnify the Diocese of Oakland under any policies to the extent they exclude coverage for damages arising out of acts of sexual abuse.

Subject to and without waiver of the foregoing, Pacific Indemnity, pursuant to the terms and conditions of the 1960-1963 Pacific Indemnity Primary Policy and while fully reserving its rights, will agree to defend Diocese of Oakland under the 1960-1963 Pacific Indemnity Primary Policy for the *Tendered Claims* identified in Exhibit A falling within the policy period of the 1960-1963 Pacific Indemnity Primary Policy.

The 1963–1966 Pacific Indemnity Primary Policy

Please note, with regard to the 1963-1966 Pacific Indemnity Primary Policy, the only documentation available are references in the coverage chart produced by the Diocese of Oakland, a reference in the prior settlement agreement, and a reference in some prior claim materials. The Diocese of Oakland has not met its burden to establish the material terms and conditions of the 1963-1966 Pacific Indemnity Primary Policy, including the limits. However, based on the available specimen forms, the analysis with respect to the 1960-1963 Pacific Indemnity Primary Policy would apply similarly to the 1963-1966 Pacific Indemnity Primary Policy, and Pacific Indemnity incorporates the above discussion herein.

Subject to and without waiver of the foregoing, Pacific Indemnity, pursuant to the terms and conditions of the 1963-1966 Pacific Indemnity Primary Policy (based on the analysis of the 1960-1963 Pacific Indemnity Primary Policy) and while fully reserving its rights, will agree to defend Diocese of Oakland under the 1963-1966 Pacific Indemnity Primary Policy for the *Tendered Claims* identified in Exhibit A falling within the policy period of the 1963-1966 Pacific Indemnity Primary Policy.

The 1966-1969 INA Primary Policies

INA's right and duty to defend is limited to suits against the insured which seek damages to which the 1966-1969 INA Primary Policy applies. Specifically, the specimen forms provide that INA shall "defend any suit against the Insured alleging such injury, sickness, disease, or destruction and seeking damages on account thereof, even if such suit is groundless, false, or fraudulent, but the company may make such investigation, negotiation and settlement of any claim or suit as it deems expedient."

For coverage to potentially apply, the claim must seek damages because of "personal injury," which is defined, in part, as "bodily injury, sickness, disease, disability, including death at any time resulting therefrom, or if arising out of the foregoing, mental anguish and mental injury." "Bodily injury" is typically defined as "bodily injury, sickness or disease sustained by any person, including death at any time resulting therefrom." Should it be determined that the 1966-1969 INA Primary Policy provides coverage for "bodily injury" liability, emotional distress without any physical injury does not constitute "bodily injury." Therefore, to the extent emotional distress is alleged without any physical injury, there is no coverage. To the extent the Diocese of Oakland is liable for damages not resulting from "bodily injury" as defined by the 1966-1969 INA Primary Policy, there would be no coverage.

"Personal injury," is further defined in the specimen form, in part, as "false imprisonment, . . . wrongful detention, . . . or, if arising out of the foregoing, humiliation." Should it be determined that the 1966-1969 INA Primary Policy provides coverage for "false imprisonment" or "wrongful detention," any claims for humiliation without false imprisonment or wrongful detention may not constitute "personal injury." Therefore, to the extent humiliation is alleged without any false imprisonment or wrongful detention, there may be no coverage.

If the 1966-1969 INA Primary Policy provides coverage for "personal injury" caused by an "occurrence" and an "occurrence" requires an "accident," to the extent the Diocese of Oakland's conduct was not "accidental," the "occurrence" requirement would not be met, and there would be no coverage under the 1966-1969 INA Primary Policy. The specimen forms define "occurrence" to mean "either an accident happening during the coverage period or a continuous or repeated exposure to conditions which unexpectedly and unintentionally causes personal injury or injury to or destruction of tangible property during the coverage period." The term "accident" as used in liability policies has been defined as a sudden, unexpected or undesigned happening or consequence from either a known or unknown cause. An accident is not present when the insured performs a deliberate act and INA reserves its rights accordingly to deny coverage. Further, to the extent the evidence demonstrates that the Diocese of Oakland "expected or intended" injury to the subject claimant, coverage will be barred. In addition, the prior settlement agreement entered into by the Diocese of Oakland involving the 1966-1969 INA Primary Policy, provides that "'Abuse claims' means all claims by persons who have sought or who the RCBO reasonably should have concluded were seeking monetary compensation or damages from the beginning of time to the Effective Date" or "known of prior to the Effective Date by priests, deacons, or seminarians, or other alleged employees, officers, agents, volunteers or representatives of the RCBO who are responsible for resolving or investigating such claims or providing notice of such claims." Thus, to the extent that the Diocese of Oakland knew of any of the abuse alleged by claimants prior to the effective date of the settlement agreement, INA reserves the right to deny coverage to the extent that any of the claims were released as part of the settlement.

To the extent that Diocese of Oakland or any of the alleged perpetrators allege that the perpetrators are insured, there is no coverage, as their alleged conduct, as well as the allegations asserted against them, arise from expected or intentional conduct and injury, which does not constitute an accident or occurrence under the 1966-1969 INA Primary Policy, and is also excluded as uninsurable willful conduct pursuant to California Insurance Code § 533. As a result, INA denies coverage for any and all claims against the alleged perpetrators.

The specimen forms limit INA's liability to "[a]ll damages because of personal injury sustained by one or more persons and injury to or destruction of property of one or more persons or organizations, including damages for care and loss of services and for loss of use of property, as the result of any one occurrence or accident." To the extent that a Claimant alleges multiple instances of abuse, INA reserves its right to assert the above-stated limit of liability. INA also reserves its rights to determine the number of claim(s) and/or occurrence(s) that exist in this matter, if any.

For coverage to potentially apply, the "personal injury" must not only be caused by an "occurrence," but also arise "out of the ownership, maintenance, or use of the premises designated on Page 1 for the purpose specified thereon, and all operation necessary or incidental thereto." To the extent any "personal injury" is alleged to have occurred away from the premises designated in the 1966-1969 INA Primary Policy, there would be no coverage. INA reserves its rights under the premises clause of the insuring agreement.

To the extent the Diocese of Oakland breached any notice provision contained in the 1966-1969 INA Primary Policy, there is no coverage. The specimen forms include various conditions that the Diocese of Oakland must meet to be entitled to coverage. Such conditions require that the Diocese of Oakland cooperate with INA in connection with the claims at issue and prohibit the Diocese of Oakland from making any voluntary payments or assuming any liabilities without INA's prior consent. INA reserves its rights to deny coverage to the extent any of these conditions is violated.

The 1966-1969 INA Primary Policy may also bar coverage for any claim against the Diocese of Oakland for punitive or exemplary damages, statutory penalties, fines, or other punitive remedies. As such, INA reserves rights to deny coverage under the 1966-1969 INA Primary Policy for any amounts that are uninsurable pursuant to applicable law.

The 1966-1969 INA Primary Policy may also contain additional exclusions that exclude coverage for damages arising out of sexual abuse. INA reserves its rights to refuse to defend or indemnify the Diocese of Oakland under any policies to the extent they exclude coverage for damages arising out of acts of sexual abuse.

Subject to and without waiver of the foregoing, INA, pursuant to the terms and conditions of the 1966-1969 INA Primary Policy and while fully reserving its rights, will agree to defend Diocese of Oakland under the 1966-1969 INA Primary Policy for the *Tendered Claims* identified in Exhibit A falling within the policy period of the 1966-1969 INA Primary Policy.

The 1966-1969 INA Excess Policy

With respect to the 1966-1969 INA Excess Policy, pursuant to the specimen excess liability coverage form, LC752-1, INA "agrees to indemnify the insured for ultimate net loss in excess of the retained limit" for "damages, including damages for care and loss of services, because of personal injury, including death at any time resulting therefrom, sustained by any person or persons." With respect to the personal injury liability coverage, INA's "liability shall be only for the ultimate net loss in excess of the insured's retained limit defined as the greater of (a) an amount equal to the limits of liability indicated beside underlying policy(ies) listed in Schedule A hereof, plus the applicable limit(s) of any other underlying insurance collectible by the insured; or (b) $[_____] as the result of any one occurrence not covered by the said policy(ies) or insurance.…" There are no terms, conditions, definitions, or exclusions that materially differ from those provided in the 1966-1969 INA Primary Policy. Accordingly, the aforementioned analysis applies equally to the 1966-1969 INA Excess Policy. Furthermore, the 1966-1969 INA Excess

Policy would only provide coverage if the limits of the respective year's underlying policies are exhausted.

There may be other coverage defenses not yet apparent that may come to light as this matter proceeds and we receive additional information. Pacific Indemnity and INA do not intend to waive any coverage defenses, nor shall Pacific Indemnity or INA be estopped from asserting any applicable coverage defense in the future.

REQUEST FOR INFORMATION

To assist Pacific Indemnity and INA in further evaluating the *Tendered Claims*, please provide to us the following information and/or materials:

1. Any acknowledgement or coverage position letter from any other insurance carrier, and kindly provide the contact information (including the name, address, telephone number and claim file number) for each respective claim adjuster;

2. Any and all information and materials pertinent to the merits of the *Tendered Claims*, including but not limited to, any information concerning the allegations of, and damages relating to the claims of sexual abuse, and specifically any information substantiating the alleged damage related to the claims of sexual abuse;

3. All responses to informal discovery, interview transcripts, expert disclosures, or evaluations, etc.;

4. Any non-privileged evaluation prepared by the Diocese of Oakland with respect to the nature of the *Tendered Claims*, likelihood of success on each of the claims asserted by the claimants, and a damage description and quantification;

5. Any non-privileged evaluation of any damages allegedly sustained by the Claimants caused by the claims of sexual abuse;

6. Any non-privileged evaluation of liability for the Diocese of Oakland;

7. Any reports prepared by experts for the Diocese of Oakland which provide a detailed evaluation of alleged damages; and

8. All upcoming dates including whether any lawsuit may be filed, mediations or settlement conferences scheduled, etc.

Should you have any additional information that you feel would either cause us to review our position or would assist us in our investigation or determination, we ask that you advise us as soon as possible. Pacific Indemnity and INA reserve the right to supplement this letter upon receipt of complete policy information or any additional information relating to coverage under any policy issued by Pacific Indemnity and INA that may be responsive to the *Tendered Claims*.

DEFENSE

Pacific Indemnity and INA will pay for all reasonable and necessary legal fees and expenses incurred by the Diocese of Oakland's chosen defense firm, Foley & Lardner LLP, for the defense of the *Tendered Claims* identified in Exhibit A from the date of tender to the date that the Diocese of Oakland initiated its bankruptcy proceedings in accordance with the July 14, 2022 Negotiated Rate Agreement between INA and the Diocese of Oakland as follows:

1. Fees will be reimbursed at the rate of [redacted] for Partners, [redacted] for Associates, and [redacted] for Paralegals.

2. Defense costs include only reasonable and necessary legal fees and expenses incurred for the defense of the insured defendant(s) in connection with the *Tendered Claims* identified in Exhibit A and do not include fees or expenses related to coverage matters, corporate matters, or the prosecution of the insured defendants' affirmative claims, if any.

3. Disbursements will be reimbursed at the actual out-of-pocket costs, with no law firm surcharge.

4. Pacific Indemnity and INA will not reimburse the Diocese of Oakland for the expense of retaining local counsel in California or for the cost of counsel to travel to or from California in the event the firm utilizes attorneys from an office of the firm outside the state of California during the course of the representation.

Pacific Indemnity and INA require that defense counsel provide periodic status reports on the progress of the defense, as well as significant pleadings filed, orders entered, discovery exchanged, as well as to keep Pacific Indemnity and INA apprised of all court filings, and pertinent dates, including mediations and trials. In addition, Pacific Indemnity and INA will require that the Diocese of Oakland and its counsel provide certain information relevant to our evaluation of the *Tendered Claims* including defense counsel's evaluation as to liability and damages. Any such investigation is subject to a reservation of all Pacific Indemnity's and INA's rights and defenses.

Pacific Indemnity and INA require that the defense firms agree to Pacific Indemnity's and INA's billing guidelines. A copy of the current litigation management guidelines is attached hereto. Pacific Indemnity and INA look forward to collaborating and cooperating with the Diocese of Oakland and defense counsel in the defense of the *Tendered Claims* identified in Exhibit A.

CONCLUSION

Pacific Indemnity and INA reserve the right to withdraw from the defense at any time if facts are developed such there was never coverage or if other circumstances so warrant. Pacific Indemnity and INA additionally reserve the right to seek contribution or indemnity from any other insurer which should be providing a defense to the Diocese of Oakland in connection with the *Tendered Claims*, for any defense costs or other expenses incurred on the Diocese of Oakland's behalf. Pacific Indemnity and INA also specifically reserve their reimbursement rights for defense and

indemnity payments as permitted by relevant state law. Pacific Indemnity and INA may seek reimbursement from the Diocese of Oakland if it should be determined that Pacific Indemnity and INA had no obligation to defend the Diocese of Oakland to pay indemnity, or to defend or indemnify the Diocese of Oakland against certain claims.

Applicable law may permit Pacific Indemnity and INA to recoup costs expended defending claims not covered under the Policies. Pacific Indemnity and INA reserve all rights in this regard as well as reserving their reimbursement rights for defense costs and for any indemnity payment made.

Pacific Indemnity and INA reserve their rights to seek a judicial declaration as to their right and obligations, if any, under the Policies. There may also be other coverage defenses not yet apparent that may come to light as this matter proceeds and we receive additional information. Pacific Indemnity and INA do not intend to waive any coverage defenses, nor shall Pacific Indemnity and INA be estopped from asserting any applicable coverage defense in the future. This letter is not, and should not be construed as, a waiver of any terms, conditions, exclusions or other provisions of the Policies, or any other policies of insurance issued by Pacific Indemnity and INA, or any related entity.

NOTICE OF RIGHT TO INSURANCE DEPARTMENT REVIEW

If the Diocese of Oakland believes Pacific Indemnity's or INA's position is incorrect, or constitutes a wrongful denial or rejection of the claim, the Diocese of Oakland may have this matter reviewed by the California Department of Insurance. The California Department of Insurance may be contacted by calling (800) 927-HELP (4357), or (213) 897-8921, or by writing to the Department at this address: California Department of Insurance, Consumer Communications Bureau, 300 South Spring Street, South Tower, Los Angeles, CA 90013.

In closing, please allow me to reiterate that we value you as an insured and encourage you to contact us should you have any questions or concerns regarding the contents of this letter. Thank you for your cooperation in this matter.

If the Diocese of Oakland has specific questions or concerns regarding this correspondence, please contact me at (201) 356-5195 or by email at jennifer.capone@chubb.com.

Thank you for your cooperation in this matter.

Very truly yours,

Jennifer Capone

Jennifer Capone
AVP, Coverage & Complex Claims Manager

CC VIA EMAIL

Mary Duarte-Mercado (Mary_Duarte-Mercado@ajg.com)
Arthur J. Gallagher & Co.

Waiver of Right to Independent Counsel

The Roman Catholic Bishop of Oakland ("Diocese of Oakland") has been advised and informed of its right to select independent counsel to represent it in connection with the *Tendered Claims* identified in Exhibit A. The Diocese of Oakland has considered this matter fully and freely waives its right to select independent counsel. The Diocese of Oakland hereby authorizes the selection of Pacific Indemnity's and INA's defense attorney to represent the Diocese of Oakland in the *Tendered Claims* identified in Exhibit A. By signing below, I represent that I have full and actual authority to waive this right on behalf of the Insureds.

Dated: _____

_____
Signature

_____
Printed Name

_____
Title

Exhibit A

Claimant	Claim No.	Alleged Perpetrator	Date(s) of Abuse	Case no.
[redacted]	047523016881	[redacted]	1961-1966	22CV020632
	KY20K2687817		1961-1968	RG19039073[3]

3 [redacted] is part of an action which also includes claimants [redacted] and [redacted]. Please note, Pacific Indemnity's and INA's coverage position here is limited only to the allegations asserted by [redacted]. Claims asserted by [redacted] and [redacted] will be addressed in a separate coverage position letter.

EXHIBIT 6

CHUBB®

Chubb
10 Exchange Place
Jersey City, NJ 07302

O (201) 356-5195
M (201) 370-5577
E: jennifer.capone@chubb.com

January 24, 2024

VIA EMAIL
Diocese of Oakland
c/o Eileen R. Ridley
Foley & Lardner LLP
555 California Street, Suite 1700
San Francisco, CA 94104
eridley@foley.com

Re: **Purported Insured:** Roman Catholic Bishop of Oakland
Purported Insurer: Unknown
Claimants: See Exhibit A
Claim No: See Exhibit A

Dear Ms. Ridley:

On behalf of Pacific Indemnity Company ("Pacific Indemnity") and Insurance Company of North America ("INA"), this letter is addressed to you as the authorized representative of the Roman Catholic Bishop of Oakland ("Diocese of Oakland") with respect to your correspondence providing notice of claims against the Diocese of Oakland as identified in Exhibit A (the "*Tendered Claims*"). It is Pacific Indemnity's and INA's understanding that the Diocese of Oakland is seeking coverage from Pacific Indemnity or INA only under the policy(ies) in effect during the dates when the alleged physical abuse purportedly took place, and not under any policies that were allegedly issued prior to or after those dates. The purpose of this omnibus letter is to address all claims alleging abuse not within a policy period of policies issued by Pacific Indemnity and INA.

Pacific Indemnity and INA have completed their investigation into the existence of potentially responsive policies to the *Tendered Claims*. Please be advised that Pacific Indemnity and INA have not located any evidence of the existence of any policies issued to the Diocese of Oakland during the period when the plaintiffs or claimants allege they were abused. Thus, Pacific Indemnity or INA cannot begin to initiate their coverage analysis in this matter. While Pacific Indemnity's and INA's policy search has not located any evidence of any policies being issued to the Diocese of Oakland during the period of abuse as alleged by the victims in the *Tendered Claims*, they will evaluate any additional information they receive regarding any potentially applicable policies. To the extent that any policies issued to the Diocese of Oakland exist and can be reasonably located, Pacific Indemnity or INA will perform a coverage analysis and provide the Diocese of Oakland with a written notification of Pacific Indemnity's and INA's coverage position as soon as reasonably thereafter.

If the Diocese of Oakland has copies of the alleged policy or any other potentially applicable policies issued by Pacific Indemnity or INA or other member companies which you believe provide coverage for the *Tendered Claims*, please provide those copies to me as soon as possible. Additionally, to the extent that the Diocese of Oakland has other documentation indicating the existence of any potentially applicable policies issued by Pacific Indemnity or INA or other

member companies and/or potential coverage thereunder, please provide copies of this documentation as well.

Please be further advised that to the extent any of the alleged policies or any other potentially applicable policies issued to the Diocese of Oakland by Pacific Indemnity or INA exist, for any such policies to provide coverage to any entity other than the Diocese of Oakland, that entity must qualify as an insured under such policies. To the extent that the Diocese of Oakland is seeking coverage for any other defendants and such defendants do not qualify as insureds under any applicable policies, there would be no coverage for those other defendants. Please note that it is the purported insured's burden to show that it qualifies as an insured under any potentially applicable policies. Pacific Indemnity and INA reserve all rights accordingly.

While Pacific Indemnity and INA have located no evidence of any policy issued to the Diocese of Oakland during the periods of abuse alleged in the *Tendered Claims*, to the extent that any policies exist and can be reasonably located, Pacific Indemnity and INA reserve all rights, claims and defenses in this matter whether under the policies, at law or in equity. Please note that nothing herein shall be deemed or construed as a waiver of any terms, conditions, exclusions or other provisions of any potentially applicable policies nor shall this letter be deemed or construed as an estoppel of any of Pacific Indemnity's and INA's rights, claims and/or defenses. Pacific Indemnity and INA further reserve the right to supplement this letter upon receipt of additional information relating to coverage for the *Tendered Claims* under its policies, to the extent any exist.

NOTICE OF RIGHT TO INSURANCE DEPARTMENT REVIEW

If the Diocese of Oakland believes that Pacific Indemnity's or INA's position is incorrect, or constitutes a wrongful denial or rejection of the claim, the Diocese of Oakland may have this matter reviewed by the California Department of Insurance. The California Department of Insurance may be contacted by calling (800) 927-HELP (4357), or (213) 897-8921, or by writing to the Department at this address: California Department of Insurance, Consumer Communications Bureau, 300 South Spring Street, South Tower, Los Angeles, CA 90013.

CONCLUSION

If the Diocese of Oakland has any information which may be pertinent to our investigation, in addition to the requests stated above, we ask that the Diocese of Oakland forward it to us immediately for our review and consideration. If the Diocese of Oakland has specific questions or concerns regarding this correspondence, please contact the undersigned right away.

Very truly yours,

Jennifer Capone

Jennifer Capone
AVP, Coverage & Complex Claims Manager

CC VIA EMAIL

Mary Duarte-Mercado (Mary_Duarte-Mercado@ajg.com)
Arthur J. Gallagher & Co.

Exhibit A

Claimant	Chubb Claim No.	Alleged Perpetrator	Date(s) of Abuse	Case No.
[redacted]	KY20K2394667	[redacted]	1972-1975	HG20053984
	KY20K20508275		1972-1975	HG20053989
	KY20K2241074		1971-1974	RG19041044
	KY20K2241074		1972-1973	RG19041044
	KY20K2687817		1971-1974	RG19039073[1]
	KY23K2649251		1974-1975	22CV015043
	KY20K2691524		1975-1977	HG19042086
	KY20K2691458		1975	HG19048691
	KY20K268718X		1971-1972	RG10048852
	KY20K2686541		1981	RG20056228

[1] [redacted] is part of an action which also includes claims from [redacted] and [redacted]. Please note, Chubb's coverage position here is limited only to the allegations asserted by [redacted]. Claims asserted by [redacted] and [redacted] are addressed in a separate letter.

[redacted]	KY20K2686541	[redacted]	1977	RG20056228[2]
	KY20K2696122		1986-1989	RG20061429
	KY20K2695814		1971	RG20064084
	KY20K268630X		1973-1975	RG20061260
	040520032548		1994	RG20061096
	KY20K2694703		1986	RG20064221
	KY20K2692811		1973-1975	RG20065425
	KY20K2692800		1973-1975	RG20065435
	KY20K269279X		1973-1975	RG20065437
	KY20K2715361		1977-1981	RG20066518
	KY20K2715229		1979-1983	RG20067225
	KY20K2710301		1975-1979	RG20067602
	KY20K2395547		1972-1975	HG20053951
	KY20K2395723		1972-1975	HG20053992

[2] John Oak Doe 2 and John Oak Doe 3 are part of an action which also includes claims from John Oak Doe 1. Please note, Chubb's coverage position here is limited only to the allegations asserted by John Oak Doe 2 and John Oak Doe 3. Claims asserted by John Oak Doe 1 is addressed in a separate letter.

[redacted]	KY21K2007280	[redacted]	1973-1976	RG20064759
	KY20K3051092		1972-1975	RG20073791
	KY20K3054348 and KY20K2394304		1972-1975	RG20075233
	KY24K2013429		1975-1976	HG19048685
	KY20K3053985		1972-1977	RG20079359
	KY22K2636887		1981-1982	22CV006624
	KY22K2637107		1980	21CV002261
	KY22K295855X		Mid 1970s to Late 1970s	22CV017826
	KY20K3050498		1973	RG20064685
	KY24K2013022		1972-1978	HG20053983
	KY24K2014188		1972-1975	RG20063924
	KY24K2013715		1972-1973	RG20057425

[redacted]	KY20K3055437	[redacted]	1972-1973	RG20075700
	KY23K2644730		1977-1982	22CV020654
	KY23K2653662		1977-1982	22CV020378
	KY23K2637327		1972-1980	22CV017382
	KY23K2650835		1974-1981	22CV021638
	KY23K2652298		1975-1981	22CV020485
	KY23K2652793		1976-1982	22CV020323
	KY23K2653596		1981	22CV020322

[redacted]	KY23K2650604	[redacted]	1978-1982	22CV020438
	KY23K2649328		1971[3]	22CV021898
	KY23K2650087		1980	22CV020393
	KY23K2655169		1971-1975	22CV020391
	KY23K2643234		1976-1978	22CV019889
	KY23K2654553		1971-1973	C22-02006
	KY23K2657083		1971-1972	22CV013335

[3] Pursuant to a Notice of Claim dated August 16, 2022 provided as part of your correspondence dated September 30, 2022, [redacted] was abused between 1968 and 1972. However, in a separate Notice of Claim dated August 25, 2022 and the complaint filed by [redacted], the date of the alleged abuse is 1971. Since the more recent Notice of Claim dated August 25, 2022 and the actual complaint filed by plaintiff provides that [redacted] was abused in 1971, for the purpose of our analysis Chubb assumes that the abuse took place sometime 1971.

[redacted]	KY23K2652760	[redacted]	1971-1972	22CV019941
	KY23K2650384		1971-1978[4]	22CV019903
	KY23K2639241		1981-1982	22CV019944
	KY23K2644257		1972-1976	22CV020602
	KY23K2643476		1980	22CV020519
	KY23K2654498		1979-1980	C22-01820
	KY23K2638207		Mid 1970s[5]	22CV023118
	KY23K2650923		1986-1987	22CV017963

[4] Pursuant to the Notice of Claim provided as part of your correspondence dated March 6, 2023, [redacted] was born on [redacted] and alleges that he was abused between 1971 and 1974. However, the Notice of Adoption filed on January 25, 2023 states that the abuse occurred sometime between 1977 and 1978. Based on the facts available, and for the purpose of our analysis, Chubb assumes that the abuse occurred sometime between 1971 and 1978.

[5] Pursuant to the Notice of Claim provided as part of your correspondence dated September 16, 2022, [redacted] was abused in the 1970s. However, the Notice of Adoption attached to the complaint provides that he was abused in the mid-1970s. Based on the facts available, and for the purpose of our analysis, Chubb assumes that the abuse occurred sometime between 1973-1977.

[redacted]	KY23K2713271	[redacted]	1971-1973	22CV020822
	KY23K2712897		1977-1981	22CV024183
	KY23K2650714		1971-1972	22CV020197
	040523044826		1973, 1974, 1979	22CV021229
	040523044871		1974-1976	22CV023092
	040523044889		1979-1984	22CV023536
	040523044898		1980-1983	22CV021953

[redacted]	040523044900	[redacted]	1980-1984	22CV022583
	047523016890		1981-1984	22CV021959
	047523016893		1971-1974	22CV021958
	040523044905		1959	22CV024069
	047523016903		1972-1975	22CV022330
	047523016907		1979-1982	22CV020524
	040523046136		1995-1997	22CV024838

[redacted]	040523046160	[redacted]	1974-1979	22CV022009
	040523046210		1973	22CV022825
	047523017682		1982-1984	22CV023068
	047523017713		1980-1983	C22-02698
	KY23K2992495		1971-1974	22CV022911
	KY23K2994145		1971-1974	22CV024582
	040523046512		1972-1974	22CV024988

[redacted]	040523046524	[redacted]	1984	22CV023950
	040523046526		1972-1976	22CV023240
	040523046531		1971-1973	22CV022534
	040523047031		1973-1976	22CV024942
	047523017582		1975-1977	22CV023400
	040523046015		Not Available[6]	22CV024139
	KY23K2805946		1981-1982	22CV019472

6 Please note, claimant [redacted] alleges that he was abused by [redacted] when he was approximately 5 years old. However, none of the documentation available provide plaintiff's date of birth or the actual period of abuse. Accordingly, it is not clear if the allegations contained in the action filed by [redacted] would fall within the coverage period of any Chubb issued policy.

[redacted]	KY23K2806639	[redacted]	1971-1972 and 1974-1976	22CV024532
	KY22K2957570		1973-1974	N/A
	KY23K2640737		1974-1979[7]	22CV020101
	KY23K2643729		1978-1981[8]	22CV020491
	KY23K2645643		1979-1983	22CV018177
	KY23K2652826		1981-1982	22CV019959

[7] Per notice of adoption filed by [redacted], he was born in [redacted] and alleges abuse between 8 to 12 years old. Accordingly, [redacted] alleges abuse sometime between 1974 and 1979.

[8] Per notice of adoption filed by [redacted], he alleges he was born on [redacted] and was abused between 10 to 12 years old. Accordingly, [redacted] alleges abuse sometime between 1978 and 1981.

[redacted]	KY23K265385X	[redacted]	1980-1983	22CV019884
	KY23K2654696		1971-1974	22CV021635
	KY23K2654432		1980	N/A
	KY23K2645335		1971-1972	N/A
	KY23K2643190		1970s[9]	N/A
	KY23K2649306		1970s[10]	RG21108531
	KY23K2645775		1970s[11]	N/A
	KY24K203037X		1972-1979	N/A
	KY24K2030237		1977-1979	N/A

[9] The Notice of Claim indicates that [redacted] was born on [redacted], after expiration of any Pacific Indemnity or INA policy in effect during the "1970s."
[10] The Notice of Claim indicates that [redacted] was born on [redacted], after expiration of any Pacific Indemnity or INA policy in effect during the "1970s."
[11] The Notice of Claim indicates that [redacted] was born on [redacted], after expiration of any Pacific Indemnity or INA policy in effect during the "1970s."

[redacted]	KY24K2029115	[redacted]	1977	N/A
	KY24K2029654		1976-1979	N/A
	KY24K2028444		1973-1976	22CV022453
	KY24K2029500		1974-1975	22CV022456
	KY24K2030270		1977-1979	N/A
	KY24K2029753		1977	22CV022476
	KY24K2029423		1974-1975	22CV022633
	KY24K2029896		1974-1976	22CV020164
	KY24K2029643		1972-1977	22CV020487

[redacted]	KY24K202960X	[redacted]	1977-1978	22CV020431
	KY24K2030006		1977-1978	22CV019903
	KY24K2029390		1972-1978	RG20085048
	KY24K2030072		1972-1976	22CV020374
	KY24K2056945		1973-1974	RG21086498
	KY24K2057220		1972-1974	RG21105426
	KY24K2056923		1971-1974	22CV019900
	KY21K2294820		Late 1970s	RG20075018[12]

[12] While John Doe 660 alleges the abuse began "[i]n the late 1980's, when Plaintiff was a minor," (¶ 24) John Doe 660 also alleges that he was born in [redacted], which means he would have reached the age of majority in 1979 (¶ 2). John Doe 660 further alleges that [redacted] was employed "in the late 1970's and early 1980's" (¶¶ 4, 10), and that he was abused while a minor student and parishioner (¶¶ 20. 22-24. 29, 31, 35, 37-38, 40-41, 43, 45, 50, 53, 56, 65, 67). The statement in paragraph 24 regarding the abuse beginning in the late 1980s is likely an error since the other paragraphs of the complaint support allegations of abuse in the late 1970s when John Doe 660 was a minor.

[redacted]	KY23K263526X	[redacted]	Mid 1970s	22CV022618[13]

[13] The notice of claim for [redacted] states that the abuse occurred sometime in the 1970s. The notice of adoption filed by [redacted] clarifies that the abuse occurred sometime in the mid-1970s.

STEPHEN H. WARREN (S.B. #136895)
JUSTINE M. DANIELS (S.B. #241180)
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Attorneys for Pacific Indemnity Company, Insurance Company of North America, Pacific Employers Insurance Company and Westchester Fire Insurance Company

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re: The Roman Catholic Bishop of Oakland, Debtor in Possession.	Chapter 11 Case No. 23-40523-WJL Adv. Pro. No. 23-04028 WJL
The Roman Catholic Bishop of Oakland, Plaintiff, v. Pacific Indemnity, *et al.*, Defendants.	**ORDER REGARDING MOVING INSURERS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION TO DISMISS THIRD AMENDED COMPLAINT** Hearing Date: March 27, 2024 Hearing Judge: Hon. William J. Lafferty, III Time: 10:30 a.m. Place: Courtroom 220 1300 Clay Street Oakland, CA 94612

On January 26, 2024, Pacific Indemnity Company, Insurance Company of North America, Pacific Employers Insurance Company and Westchester Fire Insurance Company (collectively, "Moving Insurers"), defendants in the above-captioned adversary proceeding, submitted the accompanying request for judicial notice in support of their motion to dismiss the third amended complaint ("Moving Insurers' RJN") of:

- Compl., Case No. RG20064685 (Superior Ct. Cal., Alameda Cnty., June 12, 2020) ("Exhibit 1");
- Compl., Case No. RG20064759 (Superior Ct. Cal., Alameda Cnty., June 12, 2020) ("Exhibit 2");
- Compl. for Damages for Childhood Sexual Assault, Case No. RG20079359 (Superior Ct. Cal., Alameda Cnty., Nov. 6, 2020) ("Exhibit 3");
- Compl. for Damages and Demand for Jury Trial, Case No. RG20075018 (Superior Ct. Cal., Alameda Cnty., Sept. 22, 2020) ("Exhibit 4");
- January 24, 2024 Reservation of Rights Letter from Jennifer Capone (AVP) to Eileen R. Ridley, Esq. of Foley & Lardner LLP (Counsel for Debtor) (relating to certain claims alleging abuse for year 1960-69, pertaining to policy nos. LAC127792, LAC155598, CP26786, and XBC24312) ("Exhibit 5"); and
- January 24, 2024 Reservation of Rights Letter from Jennifer Capone (AVP) to Eileen R. Ridley, Esq. of Foley & Lardner LLP (Counsel for Debtor) (relating to certain unknown claims that cause declination) ("Exhibit 6").

The Court, having considered Moving Insurers' RJN and Exhibits 1–6, HEREBY GRANTS the request. The following documents and facts are judicially noticed by the Court and deemed incorporated by reference:

1. Compl., Case No. RG20064685 (Superior Ct. Cal., Alameda Cnty., June 12, 2020) ("Exhibit 1");

2. Compl., Case No. RG20064759 (Superior Ct. Cal., Alameda Cnty., June 12, 2020) ("Exhibit 2");

3. Compl., Case No. RG20079359 (Superior Ct. Cal., Alameda Cnty., Nov. 6, 2020)

(“Exhibit 3”);

4. Compl., Case No. RG20075018 (Superior Ct. Cal., Alameda Cnty., Sept. 22, 2020) (“Exhibit 4”);

5. January 24, 2024 Reservation of Rights Letter from Jennifer Capone (AVP) to Eileen R. Ridley, Esq. of Foley & Lardner LLP (Counsel for Debtor) (relating to certain claims alleging abuse for year 1960-69, pertaining to policy nos. LAC127792, LAC155598, CP26786, and XBC24312) (“Exhibit 5”); and

6. January 24, 2024 Reservation of Rights Letter from Jennifer Capone (AVP) to Eileen R. Ridley, Esq. of Foley & Lardner LLP (Counsel for Debtor) (relating to certain unknown claims that cause declination) (“Exhibit 6”).

****END OF ORDER****

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Court Service List

All Registered ECF Participants.