

IN THE COURT OF COMMON PLEAS OF WESTMORELAND COUNTY,
PENNSYLVANIA

CIVIL DIVISION

Case No.: 5034 of 2010

THE REVEREND MARK GRUBER, OSB

COMPLAINT

Plaintiff,

vs.

THE RIGHT REVEREND DOUGLAS R.
NOWICKI, OSB; H. JAMES TOWEY;
JOHN SMETANKA, PH.D.; EDDIE
DEJTHAI; DON ORLANDO; GARY
QUINLIVAN, PH.D.; SAINT VINCENT
COLLEGE and SEMINARY; THE
BENEDICTINE SOCIETY IN
WESTMORELAND COUNTY, a.k.a. THE
BENEDICTINE SOCIETY or THE
BENEDICTINE SOCIETY OF
WESTMORELAND COUNTY; THE
MOST REVEREND LAWRENCE E.
BRANDT, JCD, PH.D.; and, THE DIOCESE
OF GREENSBURG,

Defendants.

Filed on Behalf of Plaintiff:

THE REVEREND MARK GRUBER, OSB

Counsel of Record for This Party:

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JURY TRIAL DEMANDED

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PROTHONOTARY'S OFFICE
WESTMORELAND COUNTY

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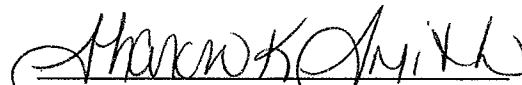
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NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you. YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
Westmoreland County Bar Association
129 North Pennsylvania Avenue
Greensburg, PA
(724) 834-8490



Sharon K. Smith, Esquire
Attorney for Plaintiff

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Plaintiff,

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Defendants.

COMPLAINT

AND NOW, comes the Plaintiff, The Reverend Mark Gruber, OSB by and through his attorney, and files the within Complaint, averring as follows:

THE PARTIES

1. Reverend Mark Gruber, OSB ("Father Mark"), is an adult individual with an address at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 15650.

2. The Right Reverend Douglas R. Nowicki, OSB is an adult individual and the Archabbot of Saint Vincent Archabbey and Chancellor of Saint Vincent College and Seminary located at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 15650-2690, and is believed to be a

resident of Westmoreland County, Pennsylvania. Reverend Mark Gruber, OSB asserts claims against Right Reverend Douglas R. Nowicki, OSB in both his official and individual capacities.

3. H. James Towey is an adult individual and the former President of Saint Vincent College located at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 15650-2690, and is believed to be a resident of Westmoreland County, Pennsylvania. Reverend Mark Gruber, OSB asserts claims against H. James Towey in both his official and individual capacities.

4. John Smetanka, Ph.D. is an adult individual and the Vice President for Academic Affairs and Academic Dean at Saint Vincent College located at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 15650-2690, and is believed to be a resident of Westmoreland County, Pennsylvania. Reverend Mark Gruber, OSB asserts claims against John Smetanka, Ph.D. in both his official and individual capacities.

5. Eddie Dejthai is an adult individual and the Chief Information Officer of Saint Vincent College located at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 15650-2690, and is believed to be a resident of Westmoreland County, Pennsylvania. Reverend Mark Gruber, OSB asserts claims against Eddie Dejthai in both his official and individual capacities.

6. Don Orlando is an adult individual and the Chief Media Spokesperson of Saint Vincent College located at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 15650-2690, and is believed to be a resident of Westmoreland County, Pennsylvania. Reverend Mark Gruber, OSB asserts claims against Don Orlando in both his official and individual capacities.

7. Gary Quinlivan, Ph.D. is an adult individual and Dean of the Alex G. McKenna School of Business, Economics and Government at Saint Vincent College located at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 15650-2690, and is believed to be a resident of Westmoreland County, Pennsylvania. Reverend Mark Gruber, OSB asserts claims against Dr. Gary Quinlivan in both his official and individual capacities

8. Saint Vincent College and Seminary ("Saint Vincent") is an institution of higher learning of the Commonwealth of Pennsylvania with its principal place of business at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 15650-2690. Reverend Mark Gruber, OSB asserts claims against Saint Vincent, its employees, agents and representatives.

9. The Benedictine Society in Westmoreland County, a.k.a. The Benedictine Society or The Benedictine Society of Westmoreland County ("Benedictine Society") is a Pennsylvania not-for-profit corporation with its principal place of business at 300 Fraser Purchase Road, Latrobe, Pennsylvania, 1560-2690. Reverend Mark Gruber, OSB asserts claims against the Benedictine Society, its employees, agents and representatives.

10. The aforesaid named Defendants, in part or in whole, may hereinafter be referred to as the "Saint Vincent Defendants."

11. The Most Reverend Lawrence E. Brandt, JCD, PhD ("Bishop Brandt") is an adult individual and the Bishop of the Roman Catholic Diocese of Greensburg, and is believed to be a resident of Westmoreland County, Pennsylvania. Reverend Mark Gruber, OSB asserts claims against Most Reverend Lawrence E. Brandt, JCD, PhD in both his official and individual capacities.

12. The Roman Catholic Diocese of Greensburg ("Diocese") was established on March 10, 1951 with its principal place of business at address is 723 East Pittsburgh Street, Greensburg, Pennsylvania, 15601-2697. Reverend Mark Gruber, OSB asserts claims against the Diocese, its employees, agents and representatives.

13. The Diocese of Greensburg covers 3,334 square miles and is comprised of four counties in the southwestern part of Pennsylvania: Greensburg, Armstrong, Fayette and Indiana Counties.

14. Venue is properly laid in this County pursuant to the provisions of subparagraph (a) of Rule 1006 of the Pennsylvania Rules of Civil Procedure.

15. Venue is proper in Westmoreland County, because the events which give rise to this Complaint occurred within Westmoreland County, Pennsylvania.

HISTORICAL FACTS

16. Father Mark has been a monk of good standing at the Benedictine Society and a fully tenured professor in the Department of Sociology/Anthropology at Saint Vincent College for over twenty three (23) years where he has taught classes in anthropology.

17. At all times material hereto, Defendant Nowicki held the position of Archabbot, the highest office of Saint Vincent Archabbey; and, the position of Chancellor, the highest office of Saint Vincent College and Seminary. In these capacities, he wielded absolute power over the local affairs of the Benedictine monks at Saint Vincent.

18. In 2006, Archabbot Nowicki appointed Defendant Towey as President of Saint Vincent College; the appointment caused much controversy in the Saint Vincent Community.

19. In February 2008, Father Mark and many other tenured faculty members, wrote Saint Vincent's Board of Directors about the "unparalleled crisis" facing Saint Vincent because of the "systematic and pervasive disregard for collegiality and shared governance" showed by Defendant Towey. The crux of the letter criticized Defendant Towey's appointment of Defendant Smetanka as Vice President of Academic Affairs.

20. On April 22, 2008, *Inside Higher Ed*, an online source for news, opinion and jobs for all of higher education, ran a story entitled, "*Too Catholic, Even for Many Monks*", which highlighted criticisms of Defendant Towey's management of Saint Vincent. In this story, the journalist interviewed nontenured professors and staff members who shared the impressions of the tenured faculty, but believed they lacked the job security to speak out.

21. According to the journalist, when many professors were too apprehensive to discuss their concerns in public, Father Mark was an exception, having been quoted in the article as saying, " "The mechanics of the university are grinding to a halt...the tenured faculty took the lead, fortunately, but there are a lot of other people who share their views, and who are tired of the overriding of collegial discourse, the discounting of the consensus way of decision making, and what I see as the obfuscation of our Catholic mission."

22. Based upon information and belief, these and other criticisms made by Father Mark were not favorably received by the Saint Vincent Defendants and they conspired and retaliated against Father Mark. Immediately following the aforesaid article, Father Gruber found himself embroiled in controversy after controversy with members of Archabbot Nowicki's and Defendant Towey's administration.

23. Specifically, any reference to Father Mark, unlike in previous years, was being removed from Saint Vincent media publications.

24. In June 2008, Defendant Smetanka, on his own accord, or with the assistance of others, including Defendants Nowicki and Towey fostered a campaign to malign Father Mark, and Father Mark's colleague, Father Mark Wenzinger, OSB wherein they were accused of drunk and disorderly behavior during a senior class party, claims which were vehemently denied by the students in attendance and ultimately dropped by Defendant Smetanka.

25. By way of letter dated July 24, 2008 directed to Defendant Smetanka and copied to Archabbot Nowicki, Father Mark Wenzinger, *inter alia*, expressed his dismay in being summoned to a meeting of which was not well disclosed to him, in order to be unexpectedly confronted with additional allegations, quite serious in light of the current situation in which priests must live in the Catholic Church in the United States. Father Mark Wenzinger, OSB

stated, "As is well known, a priest has only to be accused of 'inappropriate behavior' to have his faculties taken from him and his reputation compromised for the rest of his life."

26. Father Mark advised Defendant Smetanka that he was in contact with the Faculty Grievance Committee to seek further justice for the initiatives suffered as a result of Defendant Smetanka's office such as the "frivolous impugning of priests' good reputations" which in Father Mark's estimations "cannot be allowed to become a normative means of faculty intimidation through an anticlerical and therefore anti-Catholic campaign."

27. In December 2008, Father Mark is selected by the Saint Vincent faculty to be its spokesperson during the annual meeting before the Saint Vincent Board of Directors wherein Father Mark delivers the faculty's assessment and evaluation of the Saint Vincent Administration. The faculty's assessment and evaluation of the Saint Vincent Administration was the lowest that it had been for over twenty years.

28. On May 15, 2009, Defendant Smetanka directed Mary Beth Spore, Dean, School of Social Sciences, Communication and Education, to sternly criticize Father Mark regarding his longstanding practice in utilizing the assistance of his work-study students to submit student grades.

29. For over twenty years, Father Mark and several other Saint Vincent faculty members had in place the practice of having one of their work-study students assist them in the submission of student grades. The graduate students signed a consent form to abide by the confidentiality provisions contained therein. Saint Vincent never formulated a written policy or a procedure disavowing this practice.

30. Rather than formulating a policy and procedure to address this alleged impropriety and/or issue a memorandum to all faculty involved disavowing this practice, Dr. Spore, at the behest of Defendant Smetanka, singled out Father Mark and advised him that his

practice in allowing one student access to another student's grades violated the Family Educational Rights and Privacy Act (FERPA). Father Mark was further advised that the Registrar would no longer accept grades from a student. Father Mark was told that his conduct seriously impacted several students who "might not make Dean's list because they currently have 'IPs' instead of grades." He was further advised to refrain from this practice as his conduct placed the institution in legal jeopardy.

31. Father Mark inquired of the many faculty members who implemented the aforesaid practice as to whether they received such an admonishment and he was told by all he asked, "No." Thus, it was confounding to Father Mark and other faculty members as to how this practice in allowing a student to *access his computer* and more specifically, student grades all of a sudden became literally a federal offense.

32. Based upon information and/or belief, on or about July 22, 2009, Defendant Dejthai, the son-in-law of Dennis J. Grace, Assistant to the President Saint Vincent College, and/or a member of his department, on his own accord and/or at the direction of the other Saint Vincent Defendants targeted Father Mark as the source of a satirical essay, involving Defendants Nowicki and Towey; and therefore, Defendant Dejthai and/or a member of his department, on his own accord and/or at the direction of the other Saint Vincent Defendants searched the computer known to have been used by Father Mark at which time "male" pornography was found.

33. Based upon information and belief, from 2006 to July 24, 2009, male and female pornography had been found on computers owned and operated by Saint Vincent College; the computers were determined to have been used by students, faculty members, administrative personnel and priests.

34. Based upon information and belief, despite the fact that some of the pornography found on computers used by faculty and/or priests depicted individuals who may have been under the age of eighteen (18), there had been: no prior reports to the Pennsylvania State Police, or to the Vatican; no public statements made by college officials, no reports to the media, and, no formal disciplinary actions taken against any of those individuals who had been identified as using the subject computers; and therefore, possibly having viewed child pornography.

35. Based upon information and belief, despite the fact that some of the pornography found on computers used by faculty and/or priests depicted individuals who may have been under the age of eighteen (18), no priest or professor had ever had: their priestly and/or faculty appointments suspended or revoked; been barred from student/faculty affairs; banned from campus; and/or, coerced to seek treatment at institutions known to treat child molesters.

36. Moreover, based upon information and belief, prior to July 24, 2009, male students had complained to Saint Vincent's administration of being sexually harassed by male faculty and/or monks.

37. Based upon information and belief, the sexual harassment complaints were not reported to the Pennsylvania State Police or the Vatican; none of the claims were reported to the public through the Saint Vincent administration; none of the claims were discussed with the media; and, the accused was not banished from campus.

38. Despite this history, the Saint Vincent Defendants failed to establish, implement and/or enforce policy and/or procedure and/or systems to: (1) prevent access to pornography on its computers; (2) warn students, administrative personnel, faculty, priests and/or anyone else who may have been known to use its computers of the consequences if pornography is found on a computer that they are known to use; (3) protect individual authorized users of its computers to mitigate the unintended use of its computers by unauthorized third parties; (4) provide broad due

process protection in the event that an individual is accused of having viewed pornography on its computers; (5) keep matters confidential until such time the accused is determined to be guilty of such charges; and/or, (6) ensure that whatever information is disclosed to the public, it is complete, accurate and truthful.

INCIDENT

39. On July 24, 2009, Trooper First Class Glen Bard ("Trooper Bard") and Cpl. John LaRoche, both of the Pennsylvania State Police (PSP), presented to Saint Vincent and met with the Saint Vincent Defendants, excluding Defendants Orlando and Quinlivan.

40. During the meeting, the Saint Vincent Defendants advised the police officers that they had reason to believe that Father Mark was utilizing a computer to view child pornography.

41. Based upon information and belief, the Saint Vincent Defendants did not tell the PSP that pornography, similar to that found on the subject computer, had previously been found on other Saint Vincent computers.

42. The officers determined that the internet history supplied by the administration was sufficient to conduct an investigation into child pornography; therefore, Defendant Nowicki, without warning, summoned Father Mark to his office at which time Defendant Nowicki, his assistant Jack Perry, presided while Trooper Bard and Cpl. John LaRoche questioned Father Mark whether he had ever used the computer system to view child pornography.

43. Father Mark, despite being accused of a heinous crime, without given time to think and without the benefit of counsel, voluntarily answered the officers by stating, "I would be surprised to know that websites contained child pornography." When the officers asked Father Mark as to whether he used the computer to look for "young boys", Father Mark replied that the inquiry was irrelevant.

44. At this time, the aforesaid Saint Vincent Defendants knew or should have known that the subject computer was located in a common area and was accessible to students, faculty, administration and other third parties and in fact had been regularly accessed by individuals other than Father Mark, with and without his knowledge and the use of his password.

45. In fact, when Trooper Bard secured the subject computer it was turned on; Father Mark was logged in; and, Trooper Bard was not prompted for a password to access the computer after turning off the screen saver.

46. On July 27, 2009, Defendant Nowicki advised Father Mark that his priestly and faculty appointments would be suspended during the pendency of the PSP's criminal investigation.

47. As a result of being accused of such heinous acts, Father Mark began to deteriorate physically and mentally; therefore, at the urging of his treating psychologist, Thomas Sheridan, Ph.D, Father Mark left the Archabbey on August 1, 2009; received professional therapeutic services from Dr. Sheridan; and, temporarily resided in Dr. Sheridan's hermitage, used for observation and treatment.

48. In the meantime, Trooper Bard conducted a forensic examination of the subject computer, which revealed:

- a. Several thousand "jpeg" files and/or videos, many of which contained photographs of young men, but none that fit the criteria of the "Sexual Abuse of Children" statute;
- b. Several thousand websites, and of the sites viewed, he found videos and links to young nude men, but none that could be identified as under the age of eighteen (18) years of age; and,

- c. The computer was observed to be in an open common area and was already logged on under Father Mark's password when Trooper Bard entered the seminar room; said computer was continually logged on under Father Mark's password and would not log off on its own;
- d. Several e-mail accounts appearing to belong to other students or faculty members.

49. Following his investigation and after discussing his findings with Cpl. LaRoche and District Attorney John Peck, all agreed that no prosecution should be sought.

50. On August 4, 2009, Trooper Bard returned to Saint Vincent; reported the details of his investigation and his conclusion that no crime occurred to Defendants Towey, Dejthai, Nowicki; and, advised that the case would be closed and that no further action would be taken by the PSP.

51. The Saint Vincent Defendants requested that Trooper Bard conduct further investigation into the other email accounts identified on the subject computer; however, because there was no crime, Trooper Bard declined to do so.

52. On August 5, 2009, Trooper Bard notified Father Mark that his investigation was complete and that the results of his investigation did not support the allegations contained in the complaint, and as such, no further action would be taken by the PSP. Trooper Bard advised Father Mark that the aforesaid Defendants were notified of the results the day before.

53. Now that the criminal investigation was complete and he had been exonerated of any wrongdoing, Father Mark eagerly anticipated reinstatement of his priestly and faculty appointments and approached Archabbot Nowicki about reinstatement.

54. Instead, Archabbot Nowicki advised Father Mark that the PSP found him guilty of involvement with homosexual youth-oriented pornographic materials and as such, he was

guilty of conduct unbecoming of a priest; therefore, his priestly and faculty appointments were being revoked.

55. In light of the drastic discrepancy, Father Mark called Trooper Bard for clarification. Trooper Bard reiterated that: he reported to the aforesaid Saint Vincent Defendants that no child pornography was found on the subject computer; there was no evidence to show that Father Mark had viewed the subject pornographic "jpegs", videos and websites; and, it was clear that third parties had been utilizing the subject computer.

56. In an effort to resolve the apparent discrepancy, prove his innocence to the Saint Vincent Defendants and have his priestly and academic appointments reinstated, Father Mark made arrangements to secure the PSP report.

57. In the meantime, by way of letter dated August 6, 2009, Archabbot Nowicki refused Father Mark necessary and reasonable therapeutic services to address the physical and mental injuries he sustained as a result of being accused of having viewed child pornography, embarrassed and humiliated, and stripped of his priestly and faculty appointments.

58. Archabbot Nowicki instead commanded Father Mark to return to the Archabbey "at once", whereupon Father Mark immediately obeyed his superior; left Dr. Sheridan's hermitage and returned to the toxic environment at the Benedictine Society, resulting in further deterioration of his physical and mental state.

59. By way of letter dated August 7, 2009, Bishop Brandt notified Father Mark that "After 'careful' investigation of all the facts" and after consultation with Archabbot Nowicki, the priestly faculties of the Diocese of Greensburg, which were extended to him, were hereby withdrawn as of August 7, 2009."

60. On August 10, 2009, without the benefit of having a hard copy of the PSP report, Archabbot Nowicki, on his own accord, or with the assistance of the some or all of the other

Defendants, found Father Mark to be guilty of immoral conduct unbecoming of a priest and advised Father Mark that he would be relaying this information to Bishop Brandt and recommending withdrawal of Father Mark's priestly faculties. Furthermore, Archabbot Nowicki ordered that Father Mark submit to an involuntary admission to Saint Luke Institute in Silver Spring, MD, an institution infamous for treating pedophile priests.

61. The Defendants intentionally, recklessly and/or carelessly: (1) denied Father Mark an opportunity to confront his accuser; (2) denied Father Mark an opportunity to have his case heard by an impartial tribunal; (3) offered no evidence to substantiate the claim that Father Mark was guilty of involvement with homosexual youth-oriented pornographic materials; and, (4) failed to investigate these matters further with Father Mark to rule out the real possibility that Father Mark was simply ignorant to the possible abuse of the computer or alternatively was firmly preserving the integrity of an internal forum and protecting the confidentiality of a third party having confessed or admitted confidentially to downloading and viewing the subject pornographic material without Father Mark's knowledge during the week of July 20, 2009.

62. The "internal forum" is the church's acknowledged place of personal privacy, which can be mutualized in confidential discourse with a priest, but never publicly opined without the consent of the person.

63. On August 13, 2009, Defendant Smetanka intentionally, recklessly and/or carelessly revealed to the college deans and department chairs that Father Mark's priestly and faculty appointments had been revoked as a result of Father Mark having allegedly viewed child pornography, homosexual youth-oriented pornography, homosexual pornography and/or pornography on his computer.

64. By way of letter dated August 19, 2009, Archabbot Nowicki:

- a. intentionally, recklessly or carelessly caused to have published the following defamatory statement wherein he encouraged Father Mark "to agree to evaluation

and treatment for the issues, which led to your [Father Mark's] involvement in homosexual youth-oriented pornographic materials."

- b. ordered Father Mark to "cease all advisement and contact with students" and "not visit college offices or college dining facilities and cease all use of computers."
- c. advised Father Mark that only after treatment would a final determination be made regarding faculties, priestly ministry and suitable assignment, which he further made contingent upon the following conditions: (1) mutual agreement upon the therapist and, if necessary, the residential treatment center; (2) the therapist and treatment center must be willing to share the evaluation and the progress reports with him for treatment regarding the "problem behavior."

65. On August 21, 2009, Archabbot Nowicki summoned Father Mark and rebuked him for maligning the college administration at which time Father Mark advised Archabbot Nowicki that he was merely responding to inquiries stemming from Defendant Smetanka's August 13, 2009 public disclosure of the revocation of his priestly and faculty appointments.

66. Immediately thereafter, on August 21, 2009, Defendant Towey circulated an e-mail to Saint Vincent faculty and staff stating that Father Mark's priestly faculties had been revoked and that his position as a fully tenured professor had been terminated.

67. On August 28, 2009, during the plenary meeting of Saint Vincent faculty and administration Archabbot Nowicki stated that: Father Mark made the matter concerning the reasons behind his loss of his priestly and faculty appointments public; Father Mark falsely charged the administration of planting data on his computer while investigating another matter; and, Father Mark's computer revealed a frequency of accessing criminal sites.

68. In the days/weeks that followed, Defendant Towey revealed the subject pornographic images to Defendant Quinlivan and other visitors to his office and reported that the subject pornographic images were Father Mark's activity.

69. Moreover, Defendant Smetanka has similarly spoken and at least Defendant Quinlivan has publicly termed Father Mark a child abuser based upon abbatial, presidential, and vice presidential remarks.

70. During the period of time when Father Mark's reputation was being destroyed by the Defendants, on August 12, 2009, Father Mark sought review of the aforesaid circumstances from independent neutral canonical experts, The Tribunal of the Diocese of Youngstown, Ohio, ("The Youngstown Tribunal"), and more specifically, Monsignors Michael Cariglio and Peter Polando.

71. Upon learning this, Archabbot Nowicki admonished Father Mark stating that his acts were tantamount to an act of "disobedience", only to later approve of Monsignors Cariglio's and Polando's involvement on September 1, 2009.

72. On August 25, 2009, Father Mark's treating psychologist, Thomas Sheridan, PhD, supplied a report to the Monsignor Cariglio and Polando surrounding his professional treatment of Father Mark. Doctor Sheridan opined within a reasonable degree of psychological certainty, that there appear to be no "factors affecting Father Mark's ministry in regards to the allegations of sexual misconduct."

73. By way of letter dated September 1, 2009, Archabbot Nowicki, directed Father Mark to seek physical, psychological and spiritual assessment at one of the "approved" facilities, all of which have held themselves out to have the necessary services to treat and care for child molesters. Archabbot Nowicki warned that if Father Mark did not succumb to his request, the next "step" would be undertaken.

74. By way of epistolary brief dated September 15, 2009, Monsignors Cariglio and Polando reported to Archabbot Nowicki that there "are no violations of sexual abuse of minors due to involvement with the civilly criminal action of downloading such materials by a cleric. Consequently the Charter and the Norms for sexual abuse of a minor by a cleric do not apply in this case."

75. In other words, the priests of the Youngstown Tribunal determined that there was no violation of Church law.

76. On October 19, 2009, Monsignors Cariglio and Polando met with Archabbot Nowicki and his canonical advisor, Reverend Monsignor Mark Bartchak, judicial vicar of the Diocese of Erie, Pennsylvania to review the evidence against Father Mark and its inapplicability to Church law.

77. No new evidence was presented during the meeting; Monsignors Cariglio and Polando reiterated the opinions set forth in the September 15, 2009 brief; and, Monsignor Bartchak offered no opposing view.

78. In fact, by the time of the meeting, Monsignor Bartchak had not yet been informed that: (1) the PSP had determined that no crime occurred; others had been known to use the subject computer; and, there was no evidence that Father Mark had viewed pornography.

79. To date, the Defendants have not supplied Father Mark and/or Monsignors Cariglio and Polando with an opposing brief supporting the Defendants' charges against Father Mark.

80. The Defendants ignored the undisputed determinations of the PSP, Dr. Sheridan and The Youngstown Tribunal and, rather than reinstating Father Mark's priestly and faculty appointments, Archabbot Nowicki, acting independently and/or in concert with the other

Defendants, by way of letter dated October 19, 2009, invited Father Mark to voluntarily request from the Holy Father a dispensation from the clerical and monastic state of life.

81. In other words, Archabbot Nowicki ignored the innocent pleas of Father Mark, the PSP report, Dr. Sheridan's findings, the judgments of Father Sebastian Samay, OSB, Father Mark's spiritual director of thirty years, and The Youngstown Tribunal's determinations, and "invited" Father Mark to voluntarily seek dispensation from the priesthood and monastic life or else face forced laicization.

82. Furthermore, Archabbot Nowicki sternly warned Father Mark that if he chose not seek dispensation, he would submit the findings of the investigation to the Congregation of the Doctrine of Faith in Rome, Italy and would be seeking his penal laicization.

83. In other words, because Father Mark would not lie and admit to having "issues", which required physical, psychological and/or physical treatment surrounding his viewing of "homosexual youth-oriented pornographic materials" and submit to said treatment, Archabbot Nowicki recklessly, and without any Church doctrine to support him, sought to have the Vatican remove Father Mark's priestly title in its entirety, and to expel Father Mark from the monastic life altogether.

84. By way of letter dated October 29, 2009, Father Mark declined Archabbot Nowicki's invitation to voluntarily request from the Holy Father a dispensation from the clerical and monastic state of life. On the contrary, Father Mark again vehemently declared his innocence of all charges.

85. Therefore, Archabbot Nowicki submitted the findings of the subject investigation to the Congregation of the Doctrine of Faith in Rome, Italy seeking Father Mark's penal laicization.

86. At no time, did the Defendants permit Father Mark or Monsignors Cariglio and Polando and opportunity to view the investigative materials and/or any position statements sent to the Vatican to ensure that it received all of the pertinent evidence, nor did the Defendants permit Father Mark or Monsignors Cariglio and Polando to respond to the charges raised against Father Mark.

87. In the weeks that followed, some, if not all, of the Saint Vincent Defendants and/or their employees, agents, representatives intentionally, recklessly and/or carelessly disseminated parts of this story to the media, including Pittsburgh Tribune Review, The Pittsburgh Post Gazette and KDKA television and radio.

88. For instance, on November 27, 2009, the Tribune Review printed in pertinent part the following:

The fate of a St. Vincent College professor suspended from teaching and stripped of his functions as a priest because of alleged sexual misconduct rests with Vatican officials, according to St. Vincent Archabbot Douglas Nowicki... [College Spokesperson] Don Orlando said Gruber used his own user name and password to repeatedly access the Web sites. "Because of the graphic nature of the pornographic Web sites repeatedly visited, it is a matter of grave concern vis-a-vis church law," Orlando said.

89. Not only was there no proof that "Gruber used his own user name and password to repeatedly access the Web sites..." Inexplicably, the Saint Vincent Defendants failed to make it clear to the media that: (1) none of the alleged sites accessed on the subject computer were criminal; (2) there was no proof whatsoever that Father Mark had ever viewed pornography; (3) third parties had accessed the subject computer using Father Mark's password; and, (4) the PSP and a Catholic Tribunal had cleared Father Mark of all charges.

90. Further, the same article quoted Defendant Orlando as stating, "Diocese of Greensburg Bishop Lawrence Brandt and Nowicki agreed to strip Gruber of his priestly functions, such as celebrating Mass or hearing confessions."

91. In the same article, it is reported that the "Diocese of Greensburg spokesman Jerry Zufelt would not comment on the matter." Therefore, Bishop Brandt and the Diocese lost yet another opportunity to disavow themselves of these reports.

92. Based upon information and belief, neither Defendants Brandt nor the Diocese have ever opposed the views and statements made by the Saint Vincent Defendants, thereby, adopting them as their own.

93. As a result of all of the aforesaid communications and omissions, many in the community now classify Father Mark as a pedophile and believe he should be arrested as such.

94. On December 7, 2009, Nowicki released a statement to the Saint Vincent community, which revealed in pertinent part, the following:

Many of you have become aware of a painful situation that has arisen at Saint Vincent regarding a member of the Benedictine Community, Fr. Mark Gruber, O.S.B. Because actions required by Church Law regarding Fr. Mark's canonical status have been taken by me as Archabbot, and by the Bishop of Greensburg, President Towey has asked me to inform you of the essential facts of the case. Last August, acting in my capacity as Archabbot, I withdrew Fr. Mark's assignment to teach in the College. Subsequently, Bishop Brandt and I, in joint action, revoked Fr. Mark's faculties for priestly ministry. The issue involved the type of material found on Fr. Mark's computer. At the present time, the matter is under review by the Vatican congregation in Rome which deals with such cases involving priests and members of religious orders. Further, there is the possibility of civil litigation on the matter. Because of these circumstances, I am not permitted to discuss with you legal or canonical matters regarding the case. As one might expect, there are many rumors circulating on campus which have been brought to my attention: for example, that College officials had planted incriminating evidence on Fr. Mark's computer; that Fr. Mark is being punished for his criticism of College administration; or, that Fr. Mark has been exonerated by a Church tribunal. I assure you that these rumors and others like them are completely unfounded. Further, there have been suggestions that the computer in Fr. Gruber's office was improperly used by others during the period in mid-July when it was monitored, or that it was infected by malware. The evidence from the investigation does not support either of these possibilities.

95. Defendant Nowicki falsely represented that Father Mark had not been exonerated by a Church tribunal and that others had not improperly used the subject computer during the period in mid-July when it was monitored.

96. Based upon information and belief, on or about December 15, 2009, a third party (hereinafter referred to as the "affiant"), known to Father Mark and otherwise known to other students, faculty, administrative personnel and priests at Saint Vincent, testified under oath before Monsignors Cariglio and Polando that he, unbeknownst to Father Mark, utilized the subject computer to download homosexual pornography precisely during the week of July 20, 2009 and was solely responsible for the subject pornography.

97. Based upon information and belief, the affiant confirmed that he had confided in Father Mark; and, that Father Mark was unable to reveal his actions because he was bound by the seal of confession not to do so. The affiant stated further that Father Mark has protected the seal of confession admirably even to the point of losing his job, his priestly faculties, and allowing his reputation to be maligned.

98. The testimony was subsequently sent to the Doctrine of the Congregation of Faith in Rome, Italy and notice of the affiant's testimony was sent to Defendant Nowicki on or about December 17, 2010.

99. Despite having notice of the affiant's sworn testimony, the Saint Vincent Defendants, through its spokesperson, Defendant Orlando, in a story by the Pittsburgh Post Gazette on February 22, 2010, was quoted as saying, "The college fully investigated the possibility that others had used Father Gruber's computer to view pornography. The college's analysis of the manner and sequence in which Father Gruber's computer was used indicates that Father Gruber was operating it when pornography was being viewed."

100. As of the time of the filing of the Complaint, the Saint Vincent Defendants have never discussed the affiant's testimony with Father Mark, nor have never alerted the public to these facts, which by this time had been well known to them.

101. Based upon information and belief, the PSP investigated the affiant and found his testimony to be accurate and truthful and no criminal charges were filed. The PSP had already been appraised by the defendants of their view of the computer as only having been used by Father Mark.

102. By way of letter dated March 10, 2010, Dr. Sheridan, acting in the best interest of his patient Father Mark, recommended treatment he believed to be reasonable and necessary for Father Mark who, by this time, had been suffering physical and mental injuries and damages related to his reputation having been branded a child molester.

103. Without the benefit of a contrary professional medical or psychological opinion, by way of letter dated April 10, 2010, Archabbot Nowicki refused Dr. Sheridan's request, thereby denying Father Mark appropriate treatment;

104. Father Mark was under the impression that his priestly and faculty appointments remain suspended, in part, because the Pennsylvania State Police's investigation was ongoing;

105. On or about May 28, 2010 an Order of Court was ascertained by Father Mark's counsel requesting a second subpoena in order to obtain the most recent police report concerning this matter; all names of individuals investigated were redacted other than that of Father Mark.

106. The second/supplemental police report was provided to counsel on or about June 28, 2010; it was at this time Father Mark became aware that a meeting was held on 12/16/2009, in attendance were officials from the Pennsylvania State Police, and St. Vincent College at which time Trooper Bard reopened the investigation.

107. Following said meeting, Trooper Bard reports that he had reason to believe that there may be e-mail accounts being used for the purposes of accessing child pornography, and speaking with underage juveniles, specifically the email accounts belonging to this other individual whose name had been redacted from the report.

108. Trooper Bard secured two separate court orders requesting that Yahoo and Hotmail release any and all IP logs concerning the email accounts of this other individual.

109. Prior to Trooper Bard identifying the subscriber for all of the IP addresses listed, he was contacted by an employee/agent/servant of St. Vincent College on March 9, 2010 requesting a meeting with Trooper Bard at Eat n Park in Latrobe.

110. During this meeting Trooper Bard and Corporal John LaRoche were provided a copy of a deposition report in which Reverend Monsignor Michael Cariglio deposed the individual that was the focus of this investigation on December 15, 2009. Trooper Bard notes that the report indicated that this individual confessed to being the one using the computer system and viewing the child pornography. Trooper reported that the employee informed him that St. Vincent's had just become aware of the deposition "last week".

111. The employee/agent/servant of St. Vincent College would not permit Trooper Bard to keep or make copies of said deposition report.

112. On April 1, 2010 Corporal John LaRoche and Trooper Bard proceeded to the individual's residence, upon arrival the individual was informed of the purpose of the Officers' visit. The individual related that he was the person that committed the offense, not Father Mark Gruber. He further reported to the Officers that Father Mark did not ask him to take the blame for the incident, and that he understood he may be charged with the crimes.

113. Trooper Bard noted that as they interviewed this individual, they asked questions that only the actor should know about the incident and that this individual was able to answer all of the questions.

114. The individual was asked specifically about the images that were found from July 20th through July 24, 2009 and the individual reported that those images were in fact from him.

115. Following the interview, Trooper Bard notified DA John Peck who requested copies of all investigative material along with a transcribed audio recording of the interview.

116. On June 2, 2010 Trooper Bard went to DA Peck's office to discuss the incident, at which time DA Peck related that his opinion was that the case was not prosecutable.

117. At some point after June 2, 2010 the case involving Father Mark Gruber was closed.

118. To date, none of the Defendants have approached Father Mark concerning the allegations and subsequent punishment that they have negligently, intentionally, and willfully bestowed upon him in relation to this incident.

119. The Defendants have intentionally, recklessly and/or negligently falsely disclosed and/or misrepresented facts and concealed and omitted others to allow the world to believe that Father Mark is a child molester and/or pedophile.

COUNT I (Defamation and/or Defamation Per Se)

Plaintiff v. All Defendants

120. The averments set forth in paragraphs 1 through 119 above, are hereby incorporated by reference as though set forth fully herein.

121. By engaging in the conduct described above, the Defendants, acting in either their professional or individual capacities, defamed Father Mark.

122. The character of the communications described above are defamatory, in that the spoken words of the Saint Vincent Defendants to the PSP and others misrepresent Father Mark to have viewed child pornography and/or been involved with criminal activity.

123. The character of the communications described above are defamatory, in that Archabbot Nowicki's written words in the August 19, 2009 letter misrepresent that Father Mark

was guilty of "involvement in homosexual youth-oriented pornographic materials." Additionally Archabbot Nowicki announced to faculty and staff during a meeting the situation concerning Father Mark in August 2009; at some point shortly after the offensive material was found, a binder was also created containing said pornographic images and was kept by Archabbot Nowicki; it was presented to several individuals some of which were told by Archabbot that Father Mark could be arrested at any time.

124. On the contrary, Father Mark is one of many individuals, merely involved with a computer that was found to have noncriminal, adult, homosexual pornography on it; there is no evidence to show that Father Mark downloaded the subject pornography, frequented the subject pornographic web sites, and most importantly, viewed the subject pornography.

125. Notwithstanding the absence of evidence associating Father Mark to "homosexual youth-oriented pornographic materials", Archabbot Nowicki's letter places so much emphasis on Father Mark's "involvement" by: withdrawing his priestly and faculty appointments, incorporating recommendations for Father Mark to receive professional therapeutic services for these "issues"; banishing him from the Saint Vincent campus, contact with students and use of any computer, such that any reasonable person would conclude that Father Mark is a homosexual child molester and/or sexual deviant.

126. The character of the communications described above are defamatory, in that the spoken words of Defendant Smetanka on August 13, 2009 misrepresented to several college deans and department chairs that Father Mark's priestly and faculty appointments had been revoked as a result of Father Mark having viewed child pornography, homosexual youth-oriented pornography, homosexual pornography and/or pornography on his computer. The aforesaid misrepresentations clearly imply that Father Mark is a homosexual child molester and/or sexual deviant.

127. The character of the communications described above are defamatory, in that the spoken words of Defendant Smetanka has caused at least Defendant Quinlivan to publicly term Father Mark a child abuser.

128. The character of the communications described above are defamatory, in that the spoken words of Archabbot Nowicki on August 28, 2009 misrepresented that Father Mark made the matter public; falsely charged the administration of planting data on his computer while investigating another matter; and, most importantly, that Father Mark's computer revealed a frequency of accessing criminal sites; which imply Father Mark's guilt in connection with criminal activity associated with child pornography.

129. The character of the communications described above are defamatory, in that the spoken words of Defendant Towey in conjunction with the showing of the subject pornographic images to Dr. Gary Quinlivan and other visitors to his office and his reporting to various people misrepresented that this was Father Mark's activity and imply that Father Mark is criminally associated with illegal homosexual pornography and/or is a sexual deviant.

130. The character of the communications described above are defamatory, in that the spoken words Dr. Gary Quinlivan misrepresented that Father Mark is a child molester, criminally associated with illegal homosexual pornography and/or is a sexual deviant.

131. The character of the communications described above are defamatory, in that the spoken words of Defendants Nowicki and/or Orlando, acting under the direction and control of Defendants Towey and Saint Vincent on November 27, 2009 misrepresented to the Tribune Review that:

The fate of a St. Vincent College professor suspended from teaching and stripped of his functions as a priest because of alleged sexual misconduct rests with Vatican officials, according to St. Vincent Archabbot Douglas Nowicki...Don Orlando said Gruber used his own user name and password to repeatedly access the Web sites. Because of the graphic nature of the pornographic Web sites repeatedly visited, it is a matter of grave concern vis-a-vis church law.

132. The character of the communications described above are defamatory, in that the spoken words of Archabbot Nowicki on December 7, 2009 misrepresented the extent of Father Mark's "involvement" with incriminating evidence worthy of review by the Vatican congregation in Rome. Archabbot Nowicki misrepresented that Father Mark had not been exonerated by a Church tribunal when Monsignors Cariglio and Polando had indeed done so. Archabbot Nowicki misrepresented that the computer in Fr. Gruber's office was not improperly used by others during the period in mid-July when it was monitored, another fact that was simply not true by virtue of the affiant's sworn testimony, made generally known to Archabbot Nowicki by the canon lawyers of the Youngstown Tribunal.

133. The character of the communications described above are defamatory, in that the spoken words of Defendant Orlando, acting under the direction and control of Defendants Nowicki, Towey and Saint Vincent on February 22, 2010 misrepresented to the Post Gazette that, "The college fully investigated the possibility that others had used Father Gruber's computer to view pornography. The college's analysis of the manner and sequence in which Father Gruber's computer was used indicates that Father Gruber was operating it when pornography was being viewed." The Defendants should have been well acquainted with the seminar room and the adjacent office so they could appreciate the possibility of the computer changing hand (sequence) as it did.

134. Inexplicably, in addition to making the aforesaid false defamatory statements, the Defendants intentionally omitted and/or concealed exculpatory facts well known to them and failed to make it clear to the world that there was no proof whatsoever that Father Mark had ever viewed pornography; that third parties had accessed the subject computer; and, that the affiant accepted sole responsibility for the pornography found on the subject computer. As a result,

many in the community now classify Father Mark as a pedophile and believe he should be arrested as such.

135. Statements and actions as aforementioned have been carried out with malice, and imply criminal conduct, sexual misconduct and/or conduct not becoming of a priest on the part of Father Mark.

136. The statements made by Defendants and the as aforementioned and actions carried out are not privileged, nor are they protected by statute or the United States or Pennsylvania Constitutions.

137. The aforesaid actions, statements, omissions and concealments as aforementioned clearly apply to Father Mark.

138. It is believed and therefore averred that the clear understanding by all recipients of such communications, either explicit or implicit, involving Father Mark is that such statements are defamatory and injurious.

139. The statements and other communications as aforementioned have been understood by the recipients to apply to Father Mark.

140. Father Mark has been especially harmed by the aforesaid defamatory statements and will continue to suffer harm into the future.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT II (Invasion of Privacy – False Light)

Plaintiff v. All Defendants

141. The averments set forth in paragraphs 1 through 140 above, are hereby incorporated by reference as though set forth fully herein.

142. Plaintiff's right to privacy was invaded by publicity that unreasonably placed him in a false light before the public.

143. Defendants, either acting in their professional or individual capacities, publicly majorly misrepresented Plaintiff's character, history, activities or beliefs by associating Plaintiff with child pornography, criminal conduct, violations of church law, requiring treatment for being associated with homosexual youth-oriented pornography, and/or viewing pornography.

144. Being falsely placed in the light of a pedophile priest, child molester, sexual deviant, criminal, an unfit priest and/or one requiring treatment for being associated with homosexual youth-oriented pornography would be highly offensive to a reasonable person.

145. The Defendants knowingly, intentionally and/or with reckless disregard as to the falsity of their repeated public communications associating Plaintiff with child pornography, criminal conduct, violations of church law and/or requiring treatment for being associated with homosexual youth-oriented pornography knew or should have known that their false public communications would falsely and unreasonably place Plaintiff in the light of a pedophile priest, child molester, sexual deviant, criminal, an unfit priest and/or one requiring treatment for being associated with homosexual youth-oriented pornography.

146. The Defendants' highly offensive major misrepresentations involved a private matter, which Defendants made public and were not of legitimate concern to the public.

147. The Defendants' highly offensive major misrepresentations were not of legitimate concern to the public since by their acts and omissions the Defendants intentionally or recklessly ignored and suppressed legitimate facts known to them from the PSP, an independent canonical

tribunal and an affiant who admitted fault and completely exonerated Plaintiff for the subject material found on the subject computer.

148. The Defendants' acts and omissions in failing to disclose that:

- a. There was no criminal activity;
- b. There was no evidence that Father Mark viewed pornography;
- c. There were others found to have used the subject computer;
- d. An independent canonical tribunal found Father Mark innocent of any and all charges of violations of Church law; and,
- e. An affiant exonerated Father Mark completely and accepted full responsibility for downloading the subject pornography without Father Mark's knowledge,

created an illegitimate public concern.

149. The Defendants knew or should have known that their failure to disclose the aforesaid truthful and accurate information would have illegitimately manipulated the public into believing that Father Mark was a pedophile priest, child molester, sexual deviant, criminal, an unfit priest and/or one requiring treatment for being associated with homosexual youth-oriented pornography.

150. The Defendants' conduct caused Plaintiff to suffer irreparable harm, the harm of which has rendered him without his job as a Professor and given the fact he refused to admit he was a pedophile the consequence of the forced laicization has left the Plaintiff virtually unemployable.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT III (Fraud)

Plaintiff v. All Defendants

151. The averments set forth in paragraphs 1 through 150 above, are hereby incorporated by reference as though set forth fully herein.

A. False Representations to Archabbot Nowicki

152. The Defendants Dejthai, Smetanka, Towey and/or other Saint Vincent employees, agents, servants, acting in their professional or individual capacities, falsely represented to the Archabbot Nowicki and other third parties that Father Mark was guilty of criminal and/or sexual misconduct; addicted to pornography; viewed child pornography and/or homosexual pornography and/or involved with homosexual youth-oriented pornographic materials.

153. The aforesaid Defendants made the aforesaid false representations, with knowledge of their falsity and/or with recklessness as to whether the aforesaid representations were true or false.

154. The aforesaid Defendants made the false representations with the intent of misleading Archabbot Nowicki and/or others into relying on them.

155. The aforesaid Defendants intentionally and/or with reckless indifference concealed and/or failed to disclose to the Archabbot Nowicki and/or others that others had been known to use Father Mark's computer; therefore, it could not be proven that Father Mark had viewed any of the subject pornography.

156. The aforesaid Defendants intentionally and/or with reckless indifference prevented Archabbot Nowicki from acquiring material information that would exonerate Father Mark and in doing so concealed a defect in their representations conveyed to Archabbot Nowicki and/or others and thus, induced the Archabbot Nowicki and/or others to accept their representations in ignorance of its defective character.

157. Archabbot Nowicki, acting in his professional or individual capacity, intentionally, recklessly and/or negligently relied on the misrepresentation and caused to have commenced a criminal investigation, thereby creating the illusion that Father Mark was guilty of a heinous crime and artificially justifying removal of Father Mark's priestly and teaching faculties.

158. Father Mark's injuries and damages were proximately caused by the aforesaid Defendants' false representations to the Archabbot Nowicki and/or other third parties.

B. False Representations to Pennsylvania State Police

159. The Saint Vincent Defendants and/or their employees, agents and/or servants, acting in their professional or individual capacity, falsely represented to the PSP and other third parties that Father Mark was guilty of criminal and/or sexual misconduct; addicted to pornography; viewed child pornography and/or homosexual pornography and/or involved with homosexual youth-oriented pornographic materials.

160. The Saint Vincent Defendants made the aforesaid false representations, with knowledge of their falsity and/or with recklessness as to whether the aforesaid representations were true or false.

161. The Saint Vincent Defendants made the aforesaid false misrepresentations with the intent of misleading the PSP and others into relying on it.

162. The Saint Vincent Defendants intentionally and/or with reckless indifference concealed and/or failed to disclose to the PSP and/or others that others had been known to use Father Mark's computer.

163. The aforesaid Defendants intentionally and/or with reckless indifference prevented the PSP from acquiring material information that would exonerate Father Mark and in

doing so concealed a defect in their representations to the PSP and thus, induced the PSP to accept their representations in ignorance of its defective character.

164. The PSP justifiably relied on the misrepresentation and commenced a criminal investigation, thereby permitting the Saint Vincent Defendants to create the illusion that Father Mark was guilty of a heinous crime and artificially justifying removal of Father Mark's priestly and teaching faculties.

165. Father Mark's injuries and damages were proximately caused by the Saint Vincent Defendants' false representations to the PSP and other third parties.

C. False Representations to Bishop Brandt

166. The Saint Vincent Defendants, acting in their professional or individual capacity, caused to represent to Bishop Brandt and/or other third parties that Father Mark was guilty of criminal and/or sexual misconduct; addicted to pornography; viewed child pornography and/or homosexual pornography and/or involved with homosexual youth-oriented pornographic materials.

167. The Saint Vincent Defendants made the aforesaid false representations, with knowledge of their falsity and/or with recklessness as to whether the aforesaid representations were true or false.

168. The Saint Vincent Defendants made the aforesaid false misrepresentations with the intent of misleading Bishop Brandt and/or others into relying on it.

169. The Saint Vincent Defendants intentionally and/or with reckless indifference concealed and/or failed to disclose to Bishop Brandt and/or others that: the PSP had cleared Father Mark of any criminal wrongdoing; there was no evidence that Father Mark had viewed pornography; others had been known to use Father Mark's computer, an independent canonical tribunal exonerated Father Mark of any Church misconduct; and, that an affiant submitted sworn

testimony accepting full responsibility for downloading and viewing the subject pornography without Father Mark's knowledge.

170. The Saint Vincent Defendants intentionally and/or with reckless indifference prevented Bishop Brandt from acquiring material information that would exonerate Father Mark and in doing so concealed a defect in their representations they conveyed to the Bishop Brandt and/or others and thus, induced the Bishop Brandt and/or others to accept their representations in ignorance of its defective character.

171. Bishop Brandt intentionally, recklessly and/or negligently relied on the heinous misrepresentation, thereby creating the illusion that Father Mark was guilty of a heinous crime and artificially justifying removal of Father Mark's priestly faculties.

172. Father Mark's injuries and damages were proximately caused by the Saint Vincent Defendants' false representations to Bishop Brandt and/or other third parties.

D. False Representations to Saint Vincent Faculty and the General Public

173. The Defendants, through their actions and/or inactions, in their professional or individual capacities, caused to represent to Saint Vincent faculty and/or the general public that Father Mark was guilty of criminal and/or sexual misconduct; addicted to pornography; viewed child pornography and/or homosexual pornography and/or involved with homosexual youth-oriented pornographic materials.

174. The Defendants made the aforesaid false representations or failed to disavow false representations, with knowledge of their falsity and/or with recklessness as to whether the aforesaid representations were true or false.

175. The Defendants made the aforesaid false representations or failed to disavow them with the intent of misleading the Saint Vincent faculty and/or the general public into relying on them.

176. The Defendants intentionally and/or with reckless indifference concealed and/or failed to disclose to the Saint Vincent faculty and the general public that: there was no evidence to show that Father Mark had viewed pornography; others had been known to use the seminar room's computer, an independent canonical tribunal had found no violations of Church law; and, that an affiant submitted sworn testimony accepting full responsibility for downloading and viewing the subject pornography without Father Mark's knowledge.

177. The Defendants intentionally and/or with reckless indifference prevented the Saint Vincent faculty and/or the general public from acquiring material information that would exonerate Father Mark and in doing so concealed a defect in their representations they conveyed to the Saint Vincent faculty and the general public and thus, induced the Saint Vincent faculty and the general public to accept their representations in ignorance of its defective character.

178. The Saint Vincent faculty and the general public justifiably relied on the heinous misrepresentation, perpetuated the misrepresentation, thereby impugning Father Mark's reputation, character and good will in the community.

179. Father Mark's injuries and damages were proximately caused by the Saint Vincent Defendants' false representations to the Saint Vincent faculty and the general public.

E. False Representations to the Vatican

180. The Defendants, acting in their professional or individual capacity, caused to represent to the Vatican that Father Mark was guilty of criminal and/or sexual misconduct; addicted to pornography; viewed child pornography and/or homosexual pornography and/or involved with homosexual youth-oriented pornographic materials.

181. The Defendants made the aforesaid false representations and/or failed to disavow them, with knowledge of their falsity and/or with recklessness as to whether the aforesaid representations were true or false.

182. The Defendants made the aforesaid false misrepresentations with the intent of misleading the Vatican into relying on them.

183. The Defendants intentionally and/or with reckless indifference concealed and/or failed to disclose to the Vatican that: there was no evidence that Father Mark had viewed pornography; others had been known to use Father Mark's computer, an independent canonical tribunal found no violation of Church law; and, that an affiant submitted sworn testimony accepting full responsibility for downloading and viewing the subject pornography without Father Mark's knowledge.

184. The Defendants intentionally and/or with reckless indifference prevented the Vatican from acquiring material information that would exonerate Father Mark and in doing so concealed a defect in their representations they conveyed to the Vatican and thus, induced the Vatican to accept their representations in ignorance of its defective character.

185. The Vatican justifiably relied on the heinous misrepresentation, perpetuated the misrepresentation, thereby impugning Father Mark's reputation, character and good will in the community.

186. Father Mark's injuries and damages were proximately caused by the Defendants' false representations to the Vatican.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT IV (Civil Conspiracy)

Plaintiff v. All Defendants

187. The averments set forth in paragraphs 1 through 186 above, are hereby incorporated by reference as though set forth fully herein.

188. The individual Defendants, acting in their professional or individual capacity, agreed, planned and conspired to commit the unlawful acts described above and have taken acts in furtherance of the conspiracy, including, but not limited to written and verbal statements that are false, intended to harm, and are not privileged as aforementioned and by concealing information exculpating Father Mark from having any association with any sort of pornography.

189. The individual Defendants have continued to act in concert, combination and conspiracy with each other in unlawfully attempting to destroy Father Mark's business relations, priestly and academic careers, character and reputation in the community and pursuit of happiness.

190. Defendants' conduct in this regard is willful, intentional, unprivileged and has caused, is causing and will continue to cause irreparable harm and monetary damages to Father Mark.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT V (Intentional Infliction of Emotional Distress)

Plaintiff v. All Defendants

191. The averments set forth in paragraphs 1 through 190 above, are hereby incorporated by reference as though set forth fully herein.

192. The Restatement of Torts (2d) §46 entitled "Outrageous Conduct Causing Severe Emotional Distress" states as follows:

One who by extreme and outrageous conduct intentionally and recklessly causes severe emotional distress to another is subject to liability for such emotional distress, and if bodily harm to the other results from it, for such bodily harm.

193. The conduct of the Defendants, as aforesaid, acting in their professional or individual capacity, constituted extreme and outrageous conduct, which intentionally and/or recklessly caused physical injury and severe emotional distress to Father Mark.

194. The conduct of the Defendants was so outrageous in character, and so extreme in degree, as to go beyond all bounds of decency and was conduct utterly intolerable in a civilized community.

195. This case, as set forth above, is one in which the recitation of the facts to an average member of the community would arouse resentment against Defendants and lead an average person to exclaim that their conduct was outrageous.

196. The aforesaid conduct of the Defendants was so outrageous as to demonstrate willful, wanton and/or reckless disregard and, furthermore, evidenced a reckless indifference to the rights of Father Mark warranting an award of punitive and/or exemplary damages to punish these Defendants for outrageous conduct and to deter them or others like them from similar conduct.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT VI (Abuse of Process)

Plaintiff v. Saint Vincent Defendants

197. The averments set forth in paragraphs 1 through 196 above, are hereby incorporated by reference as though set forth fully herein.

198. The Saint Vincent Defendants, acting in their professional or individual capacity, used the criminal process to accomplish a purpose for which it was not intended.

199. The Saint Vincent Defendants knew or should have known that they were using the criminal process to accomplish a purpose for which it was not intended.

200. The Saint Vincent Defendants abused and/or perverted the criminal process by implicating Father Mark for crimes of viewing child pornography when they knew or should have known that: (1) Father Mark was a monk in good standing for over twenty-five years; (2) Father Mark had no history of criminal and/or sexual misconduct, including, but not limited to being in possession of and/or viewing pornography; (3) there was no victim; (4) Father Mark had no prior history of being found guilty of conduct not becoming of a priest; (5) there was no prior history of pornography being found on the subject computer, therefore no prior notice to Father Mark; (6) there was no evidence that Father Mark had viewed pornography; (7) others had access to Father Mark's computer; (8) others were in fact using Father Mark's computer; (9) the subject images were not of minors; (10) others accepted full responsibility for downloading and viewing the subject pornography without Father Mark's knowledge; and, (11) there were prior instances of finding similar pornography on other Saint Vincent Computers for which neither the PSP nor the Vatican were contacted.

201. Based upon information and belief, the Saint Vincent Defendants abused and/or perverted the criminal process by intentionally, recklessly and/or negligently ignoring the PSP's reported findings and repeatedly associating Father Mark with criminal conduct.

202. Based upon information and belief, the Saint Vincent Defendants abused and/or perverted the criminal process by demanding and/or instructing the PSP to interrogate the affiant

in connection with his sworn testimony, despite the fact that the PSP previously refused the Saint Vincent Defendants to investigate the other users of the subject computer since it was clear that no crime had occurred.

203. The Saint Vincent Defendants abused and/or perverted the criminal process for the following reasons:

- a. to destroy Father Mark's reputation and character in the community;
- b. to remove Father Mark's priestly and academic faculties;
- c. to punish Father Mark for speaking out against the Saint Vincent Defendants' and/or their management of Saint Vincent;
- d. to scare others from speaking out against the Saint Vincent Defendants for any reason; and,
- e. to facilitate the re-election of Archabbot Nowicki.

204. As a result of the Saint Vincent Defendants' acts and/or omissions in abusing/perverting the criminal process, Father Mark had suffered significant and permanent harm.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT VII (Tortious Interference with Business Relations)

Plaintiff v. All Defendants

205. The averments set forth in paragraphs 1 through 204 above, are hereby incorporated by reference as though set forth fully herein.

206. The Defendants, acting in their professional or individual capacity, have intentionally engaged in conduct for the purpose of injuring the business reputation, business relations and business prospects of Father Mark.

207. The conduct as described above has manifested in interference with the ability of Father Mark to conduct regular business, including but not limited to retreats, with his customers and to obtain business from prospective customers.

208. The conduct of Defendants in this regard is willful, intentional, malicious and unprivileged and has caused, is causing and will continue to cause irreparable harm and monetary damages to Father Mark.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT VIII (Negligence)

Plaintiff v. All Defendants

209. The averments set forth in paragraphs 1 through 208 above, are hereby incorporated by reference as though set forth fully herein.

210. The Defendants had a duty to Father Mark to:

- a. Warn him of the dire consequences as to what would happen if "homosexual youth-oriented pornographic materials" were found on the computer he was using;
- b. Warn him that if others downloaded and/or visited Web sites involving "homosexual youth-oriented pornographic materials", even without his knowledge, he could be viewed as a child molester and that actions would be taken to strip him of his priestly title forever;

- c. Warn anyone using Saint Vincent computers that if they downloaded and/or visited Web sites involving "homosexual youth-oriented pornographic materials", they would jeopardize the lives, jobs and/or reputations of those also having access to said computer;
- d. Eliminate and/or mitigate access to pornography on Saint Vincent computers;
- e. Mitigate the circumstances by which innocent people, like Father Mark, could be blamed and found guilty of having "involvement with homosexual youth-oriented pornographic materials" with or without the benefit of broad due process protections;
- f. Completely and fully investigate all allegations of sexual misconduct against Father Mark;
- g. Keep all matters involving allegations of criminal, sexual and/or pastoral misconduct against Father Mark confidential;
- h. Provide a speedy forum with broad due process protections to enable Father Mark to defend against allegations of sexual misconduct;
- i. Provide him with the same rights as a full tenured faculty member available to non-Benedictine faculty members;
- j. Rule out completely the possibility that others were responsible for the downloading and viewing the subject pornography;
- k. Refrain from making false reports, which either explicitly or implicitly associated Father Mark with criminal activity, sexual misconduct, and/or downloading and viewing homosexual youth-oriented pornography;

211. Once the matter was made public, the Defendants had a duty to Father Mark to be transparent and fully and accurately disclose all facts surrounding their

allegations against Father Mark, including, but not limited to uncontroverted facts that there was no evidence to show that Father Mark ever viewed the subject pornography and/or that a third party had admitted responsibility for the downloading and viewing of the subject pornography.

212. The Defendants, acting in their professional or individual capacity, breached all of the aforementioned the duties owed to Father Mark.

213. The Defendants knew or should have known of the aforementioned acts or omissions prior to July 24, 2009.

214. As the direct and proximate result of the negligence, carelessness and recklessness of Defendants and their agents, servants and/or employees, Father Mark has sustained and will continue to sustain damages in the form of income loss; past, present and future medical bills; other expenses, physical and mental pain, suffering, inconvenience, loss of enjoyment of life's pleasures and injury to reputation and character.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT IX (Negligent Infliction of Emotional Distress)

Plaintiff v. All Defendants

215. The averments set forth in paragraphs 1 through 214 above, are hereby incorporated by reference as though set forth fully herein.

216. The Restatement of Torts (2d) §436 entitled "Physical Harm Resulting from Emotional Disturbance" states, in part, as follows:

1. If the actor's conduct is negligent as violating a duty of care designed to protect another from a fright or other emotional disturbance which the actor should

recognize as involving an unreasonable risk of bodily harm, the fact that the harm results solely through the internal operation of the fright or other emotional disturbance does not protect the actor from liability.

2. If the actor's conduct is negligent as creating an unreasonable risk of causing bodily harm to another otherwise than by subjecting him to fright, shock, or other similar and immediate emotional disturbance, the fact that such harm results solely from the internal operation of fright or other emotional disturbance does not protect the actor from liability.

217. As a result of the Defendants' conduct aforesaid, these Defendants, acting in their professional or individual capacity, negligently and carelessly inflicted severe emotional distress upon Plaintiff by:

- a. Accusing him of criminal activity;
- b. Accusing him of sexual misconduct;
- c. Accusing him of downloading and viewing child pornography;
- d. Accusing him of downloading and viewing "homosexual youth-oriented pornographic materials";
- e. Accusing him of downloading and viewing pornography;
- f. Requiring and/or coercing him to seek treatment at facilities infamous for treating pedophile priests;
- g. Suspending and/or revoking his priestly and faculty appointments;
- h. Denying him appropriate medical and psychological treatment;
- i. Making the matter known to the public;
- j. Misrepresenting the facts to the public; and,
- k. Failing to disclose all relevant facts to the public.

218. As a direct and proximate result of the Defendants' conduct, Plaintiff has suffered the following physical and mental injuries, some or all of which may be permanent in nature

- a. Severe depression;
- b. Stress and anxiety;
- c. Headaches and nausea, including episodes of vomiting contemporaneous with some of the aforesaid circumstances and for a considerable period thereafter;
- d. Sleeplessness and nightmares;
- e. Weight loss and loss of appetite;
- f. Irritable bowel syndrome and diarrhea;
- g. Loss of speech; and,
- h. Fear and paranoia.

219. As a direct and proximate result of Defendants' activities, Father Mark has and will suffer immediate and irreparable harm, as previously alleged

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT X (Negligent Misrepresentation)

Plaintiff v. All Defendants

220. The averments set forth in paragraphs 1 through 219 above, are hereby incorporated by reference as though set forth fully herein.

221. The Defendants and/or their employees, agents, servants had a duty to Father Mark to represent fully, accurately and truthfully any and all reasonable and necessary facts to support and/or refute their claims that Father Mark was guilty of criminal and/or sexual

misconduct; addicted to pornography; viewed child pornography, homosexual pornography, pornography and/or was involved with homosexual youth-oriented pornographic materials.

222. The Defendants and/or their employees, agents, servants, acting in their professional or individual capacity, recklessly, negligently and/or carelessly concealed facts that would refute the allegations that Father Mark was guilty of criminal and/or sexual misconduct; addicted to pornography; viewed child pornography and/or homosexual pornography and/or involved with homosexual youth-oriented pornographic materials.

223. Father Mark's injuries and damages were proximately caused by the Defendants' negligent misrepresentations.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

COUNT XI (Corporate Negligence)

Plaintiff v. The Corporate Defendants

224. The averments set forth in paragraphs 1 through 223 above, are hereby incorporated by reference as though set forth fully herein.

225. The Corporate Defendants, employees, agents, and/or representatives, acting in their professional or individual capacities were negligent in the following particulars:

- a. In the commission of these acts or omissions by its personnel through its facility, including the acts or omissions of its personnel, staff, employees, co-employees, supervisors, officers, directors, authorized personnel, agents, assigns and others;
- b. In failing to provide a safe and secure environment for its employees, priests, students, agents, servants and/or representatives;

- c. In hiring and retaining improperly educated, trained and experienced individuals to provide adequate supervision, security and/or safety for its employees, students, priests, agents, servants and/or representatives;
- d. In failing to hire properly educated, trained and experienced individuals to provide adequate supervision, security and/or safety for its employees, students, priests, agents, servants and/or representatives;
- e. In failing to educate and train its personnel, staff, employees, co-employees, supervisors, officers, directors, authorized personnel, agents, assigns and others to provide supervision, security and/or safety for its employees, students, priests, agents, servants and/or representatives;
- f. In failing to establish, implement and enforce appropriate hiring and employee retention policies and procedures;
- g. In failing to establish, implement and enforce appropriate supervision, security and/or safety policies and procedures for its employees, students, priests, agents, servants and/or representatives;
- h. In failing to establish, implement and enforce appropriate computer information technology policies and procedures for its employees, students, priests, agents, servants and/or representatives;
- i. In failing to establish, implement and enforce appropriate sexual misconduct policies and procedures for its employees, students, priests, agents, servants and/or representatives;
- j. In failing to establish, implement and enforce appropriate policies and procedures for circumstances in which pornography is detected on its computers for its employees, students, priests, agents, servants and/or representatives; and,

k. In failing to establish, implement and enforce appropriate policies and procedures to protect individuals from being falsely accused and publically humiliated.

226. The Defendants knew or should have known of the aforementioned acts or omissions prior to July 24, 2009.

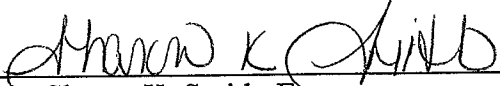
227. The Defendants negligence was the proximate cause of Plaintiff's serious and permanent injuries.

WHEREFORE, Plaintiff claims damages from Defendants in a sum in excess of Twenty Five Thousand (\$25,000.00) Dollars and demands a trial by jury.

JURY TRIAL DEMANDED

Respectfully submitted,

Smith Law P.C.

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Attorney for Plaintiff

VERIFICATION

I, Reverend Mark Gruber, OSB, do hereby verify that the averments set forth in the within COMPLAINT, are true and correct to the best of my personal knowledge, information and belief.

I understand that false statements herein are made subject to penalty of 18 Pa. C.S.A. § 4904 relating to unsworn falsification to authorities.

Dated: Sept. 3, 2010

BY Rev. Mark Gruber, OSB
Reverend Mark Gruber, OSB