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FILED

FEB 28 2018

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA
BY [Signature] DEPUTY CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SONOMA

10 JAMES GLOCKNER and
11 ALEXA GLOCKNER, on behalf of
12 themselves and all others similarly situated,

13 Plaintiffs,

14 v.

15 DEBBIE PICARD, an individual,
16 ALVIN VILLARUEL, an individual,
17 PASTOR OF ST. FRANCIS SOLANO
18 CATHOLIC CHURCH OF SONOMA, A
19 CORPORATION SOLE, a corporation,
20 THE ROMAN CATHOLIC BISHOP OF
21 SANTA ROSA, a corporation d/b/a "ST.
22 FRANCIS SOLANO SCHOOL," and
23 DOES 1-9, inclusive,

24 Defendants.

Case No. SCV-262064

CLASS ACTION

**COMPLAINT FOR INJUNCTION AND
DAMAGES BASED ON:**

- 15 (1) UNLAWFUL PRIVATE GAG
16 ORDERS (Civ. Code section 1670.8)
17 (2) VIOLATIONS OF THE UNFAIR
18 COMPETITION LAW (Bus. & Prof.
19 Code sections 17200 *et seq.*)

20 By fax

JURY TRIAL DEMANDED

23 Plaintiffs, by and through their undersigned attorney, on behalf of themselves and a
24 proposed class of similarly situated individuals, allege as follows:

25 **I. INTRODUCTION**

26 1. By 2006, at least 17 priests from the Santa Rosa diocese had been accused of
27 molesting at least 60 children, including in St. Francis Solano Parish, according to *The Press*
28

1 *Democrat*.¹ Just ten years later, however, the St. Francis Solano School was forbidding its
2 students to publicly criticize the “teachers, the administration, or the pastor.” It still is. Plaintiffs
3 bring this action for injunctive relief and damages under section 1670.8 of the Civil Code, which
4 outlaws private gag orders in a school enrollment contract.

5 II. PARTIES

6 A. Plaintiffs

7 2. Plaintiff JAMES GLOCKNER is and at all relevant times has been a natural person
8 and a citizen of California, residing in Sonoma County.

9 3. Plaintiff ALEXA GLOCKNER is and at all relevant times has been a natural person
10 and a citizen of California, residing in Sonoma County.

11 B. Defendants

12 4. Defendant THE ROMAN CATHOLIC BISHOP OF SANTA ROSA (the “Bishop
13 Corporation”) is a corporation with its principal place of business at 985 Airway Court, Santa
14 Rosa, California 95403, in Sonoma County.

15 5. On information and belief, the Bishop Corporation owns and operates, and does
16 business as, ST. FRANCIS SOLANO SCHOOL (the “St. Francis School” or “St. Francis”), its
17 alter ego, a private elementary school located at 342 West Napa Street, Sonoma, California
18 95476.

19 6. The St. Francis School has not registered a place of business with the California
20 Secretary of State.

21 7. The St. Francis School’s teachers are employees of the St. Francis School.

22 8. The St. Francis School’s teachers are employees of the Bishop Corporation.

23 9. The St. Francis School’s administrators are employees of the St. Francis School.

24 10. The St. Francis School’s administrators are employees of the Bishop Corporation.

25 11. The St. Francis School’s pastor is an employee of the St. Francis School.

26
27 ¹ *Sheriff’s Deputies Investigating After Assistant Pastor at St. Francis Solano Admits Sexual*
28 *Misconduct with Boy*, The Press Democrat (May 23, 2006), available at
[http://www.pressdemocrat.com/news/2120626-181/sheriffs-deputies-investigating-after-](http://www.pressdemocrat.com/news/2120626-181/sheriffs-deputies-investigating-after-assistant)
[assistant.](http://www.pressdemocrat.com/news/2120626-181/sheriffs-deputies-investigating-after-assistant)

1 12. The St. Francis School's pastor is an employee of the Bishop Corporation.

2 13. Defendant DEBBIE PICARD is and at all relevant times has been the principal of St.
3 Francis.

4 14. Defendant ALVIN VILLARUEL is and at all relevant times has been the pastor of St.
5 Francis.

6 15. Defendant PASTOR OF ST. FRANCIS SOLANO CATHOLIC CHURCH OF
7 SONOMA, A CORPORATION SOLE (the "Pastor Corporation") is and, since March 9, 2017
8 has been, a corporation. It operates the St. Francis Catholic Church of Sonoma, with which the
9 St. Francis School is affiliated. Mr. Villaruel organized and incorporated the Pastor Corporation.
10 He runs it.

11 16. The true names and capacities of those individuals sued as DOES 1-9 are unknown to
12 Plaintiffs, who therefore sue them by fictitious names. Plaintiffs will seek leave of court to
13 amend this complaint to allege their true names and capacities when ascertained.

14 17. Plaintiffs are informed and believe, and on that basis allege, that each defendant sued
15 under such fictitious names (DOES 1-9 and, collectively with all named defendants,
16 "Defendants") is in some manner responsible for the occurrences alleged herein and that
17 Plaintiffs' injuries as alleged herein were actually and foreseeably caused by the conduct of such
18 defendants.

19 18. Plaintiffs are informed and believe, and on that basis allege, that at all times material
20 to this complaint, each of Defendants was functioning as the agent, servant, partner, or employee
21 of, or working in concert with each of his, her or its then-existing co-defendants and was acting
22 within the course and scope of such agency, service, partnership, employment or concerted
23 activity. To the extent that certain acts and omissions were perpetrated by certain defendants, the
24 other then-existing defendants confirmed and ratified those acts and omissions.

25 19. Whenever this complaint refers to an act or failure of one or more defendants, it is
26 also deemed to refer to the acts and failures of each such defendant acting individually, jointly
27 and severally. Whenever this complaint refers to non-parties who were employees or agents of
28

1 one of more defendants, those non-parties acted at all relevant times on behalf of Defendants
2 within the course and scope of employment.

3 20. Plaintiffs are informed and believe, and on that basis allege, that at all times material
4 to this complaint, each of the then-existing defendants and their agents and employees knew or
5 reasonably should have known that unless they intervened to protect Plaintiffs, and to adequately
6 supervise, prohibit, control, regulate, discipline and/or otherwise penalize the conduct of the
7 agents and employees of Defendants, the remaining defendants and employees perceived the
8 conduct as ratified and condoned.

9 III. JURISDICTION AND VENUE

10 21. This Court has subject matter jurisdiction over all causes of action alleged herein
11 pursuant to the California Constitution, Article VI, § 10 and is a Court of competent jurisdiction
12 to grant the relief requested. Plaintiffs' claims for violation of Civil Code section 1670.8 and
13 Business & Professions Code sections 17200 *et seq.* arise under the laws of the State of
14 California, are not preempted by federal law, do not challenge conduct within any federal
15 agency's exclusive domain and are not statutorily assigned to any other trial court.

16 22. Defendants transact business in the State of California. The unlawful conduct
17 occurred predominantly or exclusively in the State of California.

18 23. Venue is proper in this Court pursuant to California Code of Civil Procedure sections
19 395 and 395.5. Defendants conduct their business predominantly in the County of Sonoma. The
20 injuries sustained as a result of Defendants' illegal conduct occurred predominantly in the
21 County of Sonoma, where the St. Francis School is located. On information and belief, the
22 private gag orders were written and proposed by defendants in the County of Sonoma.

23 IV. FACTUAL ALLEGATIONS

24 A. California Bans Gagging Truthful Internet and Public Postings in Consumer Contracts.

25 24. In 2014, the press reported on non-disparagement agreements in form contracts,
26 barring people from making truthful internet and public postings about sellers of consumer goods
27 and services.

1 25. On September 9, 2014, the Governor of the State of California signed into law
2 Assembly Bill 2365, codified at Cal. Civ. Code § 1670.8.

3 26. Section 1670.8 prohibits proposing or using provisions in contracts for the sale or
4 lease of consumer goods or services that waive the consumer's right to make any statement
5 regarding the seller or its employees, agents, goods or services. Cal. Civ. Code § 1670.8(a).

6 27. Section 1670.8 establishes a private right of action against any person who violates it.
7 Cal. Civ. Code § 1670.8(c).

8 28. Educational services are consumer services. 16 C.F.R. § 429.0(b).

9 **B. Defendants Gag Truthful Internet and Public Postings in the Consumer Contract for the**
10 **2016 – 2017 Academic Year.**

11 29. In 2016, Ms. Picard, Mr. Villaruel and the Bishop Corporation proposed a consumer
12 contract (the "2016 – 2017 Contract") to Plaintiffs.

13 30. The primary document embodying the 2016 – 2017 Contract was captioned: "St.
14 Francis Solano School: 2016-2017 Agreement Between Parents, Principal and Pastor."

15 31. The contract specified the amount of money Plaintiffs would pay as tuition.

16 32. The contract incorporated by reference a "Parent/Student Handbook" and required
17 Plaintiffs to sign and return a "verification" of agreeing to the handbook. The contract threatened
18 to suspend the student until the School's receipt of the acknowledgement of the handbook.

19 33. The handbook stated: "Internet/Public Postings: The content of a parent[']s or
20 student['s] blog should not include derogatory statements regarding the school, enrolled students
21 or their parents, teachers, the administration, or the pastor. Derogatory postings by either
22 students or their parents may result in the expulsion of the student."

23 34. This non-disparagement provision waived Plaintiffs' right to make any statement
24 regarding Defendants and their employees, agents, goods and services.

25 35. The contract was offered on a take-it-or-leave-it basis. Plaintiffs were not invited to
26 negotiate it.

27 36. Plaintiffs signed the contract and enrolled their son in the St. Francis School for the
28 2016 – 2017 academic year.

1 37. The St. Francis School stamped the signed contract “OK,” treated Plaintiffs’ son as
2 enrolled in the St. Francis School and accepted tuition payments from Plaintiffs.

3 38. On information and belief, Ms. Picard, Mr. Villaruel and the Bishop Corporation
4 proposed an identical non-disparagement provision to all other parents of students enrolled at the
5 St. Francis School during the 2016 – 2017 academic year.

6 39. On information and belief, all other parents of students enrolled at the St. Francis
7 School during the 2016 – 2017 academic year were subject to an identical non-disparagement
8 provision.

9 40. The 2016 – 2017 Contract silenced Plaintiffs from making truthful internet and public
10 postings regarding Defendants and their employees, agents and services.

11 41. This private gag order was effective at silencing the other parents, too. The leading
12 school review sites have zero negative or even middling reviews of the St. Francis School written
13 during the 2016 – 2017 academic year. Neither Yelp nor GreatSchools.org shows a single review
14 written during the 2016 – 2017 academic year awarding the St. Francis School fewer than 5 out
15 of 5 stars.

16 **C. Defendants Gag Truthful Internet and Public Postings in the Consumer Contract for the**
17 **2017 – 2018 Academic Year.**

18 42. In 2017, Ms. Picard, Mr. Villaruel, the Pastor Corporation and the Bishop
19 Corporation proposed a consumer contract (the “2017 – 2018 Contract”) to Plaintiffs.

20 43. The primary document embodying the 2017 – 2018 Contract was captioned: “St.
21 Francis Solano School: 2017-2018 Agreement Between Parents, Principal and Pastor.”

22 44. The contract specified the amount of money Plaintiffs would pay as tuition.

23 45. The contract incorporated by reference a “Parent/Student Handbook” and required
24 Plaintiffs to sign and return a “verification” of agreeing to the handbook. The contract threatened
25 to suspend the student until the School’s receipt of the acknowledgement of the handbook.

26 46. The letter introducing the handbook stated: “Signing the acknowledgement form
27 indicates your willingness to abide by the terms in this handbook.” The letter bore the signature
28 of Debbie Picard as Principal of the St. Francis School.

1 47. The handbook stated: “Internet/Public Postings: The content of parents’ or students’
2 blogs should not include derogatory statements regarding the school, enrolled students or their
3 parents, teachers, the administration, or the pastor. Derogatory postings by either students or
4 their parents may result in the expulsion of the student.”

5 48. This non-disparagement provision waived Plaintiffs’ right to make any statement
6 regarding Defendants and their employees, agents, goods and services.

7 49. The contract was offered on a take-it-or-leave-it basis. Plaintiffs were not invited to
8 negotiate it.

9 50. Ms. Glockner signed the contract, and Plaintiffs enrolled their son in the St. Francis
10 School for the 2017 – 2018 academic year.

11 51. The St. Francis School stamped the signed contract “OK,” treated Plaintiffs’ son as
12 enrolled in the St. Francis School and accepted tuition payments from Plaintiffs.

13 52. On information and belief, Defendants proposed an identical non-disparagement
14 agreement to all other parents of students enrolled at the St. Francis School during the 2017 –
15 2018 academic year.

16 53. On information and belief, all other parents of students enrolled at the St. Francis
17 School during the 2017 – 2018 academic year were subject to an identical non-disparagement
18 provision.

19 54. The 2017 – 2018 Contract silenced Plaintiffs from making truthful internet and public
20 postings regarding Defendants and their employees, agents and services.

21 55. This private gag order was effective at silencing other parents, too. The leading
22 school review sites have zero negative or even middling reviews of the St. Francis School written
23 during the 2017 – 2018 academic year. Neither Yelp nor GreatSchools.org shows a single review
24 written during the 2017 – 2018 academic year awarding the St. Francis School fewer than 5 out
25 of 5 stars.

26 V. CLASS ACTION ALLEGATIONS

27 56. Plaintiffs bring this case as a class action pursuant to Code of Civil Procedure section
28 382. The class (the “Class”) that Plaintiffs seek to represent is composed of and defined as

1 follows: every parent whose child was enrolled in the St. Francis Solano School at any time
2 during the 2016 – 2017 academic year and/or the 2017 – 2018 academic year. Excluded from the
3 Class are:

- 4 a. Defendants and the judge to whom this case is assigned;
- 5 b. members of Defendants' and the judge's immediate families;
- 6 c. officers, directors, and employees of (1) Defendants and (2) any
7 subsidiaries, parent organizations or affiliates of Defendants; and
- 8 d. legal representatives, heirs, successors and assigns of any excluded person
9 or entity.

10 57. Plaintiffs reserve the right to modify or amend the Class description with greater
11 specificity, division into subclasses or limitation as to particular issues.

12 58. This class action seeks a declaratory judgment, a permanent injunction, and civil
13 penalties as provided under Civil Code section 1670.8.

14 59. Typicality and Commonality: Plaintiffs' claims are typical of those of their fellow
15 Class members, and the latter claims are typical of one another, because the challenged conduct
16 was uniform. On information and belief, each year, Defendants proposed the exact same
17 template contract to every parent. While the template had some student-specific blanks to fill in,
18 none of those blanks were found in the contractual language incorporating the handbook or the
19 private gag order therein. The proposing and use of the contract violates section 1670.8; unlike in
20 a typical contract action, no individualized analysis of (say) performance or breach is required.
21 Moreover, the draconian penalty for delay in submitting the signed acknowledgement of the
22 handbook—suspension of the student—gives rise to the inference that families uniformly
23 received the handbook and returned the acknowledgement form therein.

24 60. Adequacy: Plaintiffs are representative parties who will fully and adequately protect
25 the interests of Class members, and who have retained competent class counsel. Plaintiffs have
26 no interests contrary to or in conflict with those of the class they seek to represent. The identities
27 and addresses of the members of the Class are easily determinable from the defendants' records.

1 61. Numerosity: On information and belief, the St. Francis School enrolls over 200
2 students. Therefore, on information and belief, the Class's size exceeds 400 members. Joinder of
3 them all would be impracticable.

4 62. Superiority: A class action is a better way of resolving this dispute than a multiplicity
5 of individual actions. The statutory penalties are fixed dollar amounts, so individual mini-trials
6 on damages will not be needed. The dollar amounts are small enough, relative to the cost of
7 prosecuting an individual action, that few if any Class members would bring an individual
8 action; on information and belief, no St. Francis School parent has ever brought an individual
9 section 1670.8 claim. Defendants' culture of silence, obedience to authority, and rejection of the
10 laws of the State of California and the United States—as exemplified by the provisions found
11 within the Pastor Corporation's Articles of Incorporation, the St. Francis School's history of
12 student expulsions, sexual assaults in the St. Francis Solano Parish and the non-disparagement
13 agreements themselves—intimidates parents from challenging Defendants' gag orders, including
14 in court.

15 63. Predominance: The main factual and legal questions that will drive the resolution of
16 this case will have the same answer for all class members, including Plaintiffs. These questions
17 include:

- 18 a. Is education a service?
19 b. Is the St. Francis School's enrollment agreement a contract?
20 c. Do parents act as businesses or consumers when they enroll their children
21 in the St. Francis School?
22 d. Are the St. Francis School's teachers its agents?
23 e. Are the St. Francis School's administrators its agents?
24 f. Is the St. Francis School's pastor its agent?
25 g. Which defendants proposed, entered into or used the enrollment contracts
26 in each school year?
27 h. In each school year, which defendants are referenced by the caption of the
28 St. Francis School's enrollment agreement as parties to that agreement?

1 i. Did Defendants propose, enter into or use contracts for the sale or lease of
2 consumer goods or services that waived the consumer's right to make any statement regarding
3 the seller or its employees, agents, goods or services?

4 j. Is it disparaging to call someone a child abuser, and if so, was it reckless
5 of Defendants—in light of the history of the abuse of children in the Santa Rosa diocese—to
6 impose a gag order on children that reasonable adults, let alone impressionable children, could
7 interpret as barring such whistleblowing?

8 k. Was Defendants' use of the non-disparagement provision accidental?

9 **VI. FIRST CAUSE OF ACTION**

10 **For Unlawful Private Gag Orders, Civil Code Section 1670.8**

11 **By All Plaintiffs and on Behalf of the Proposed Class**

12 **Against All Defendants**

13 64. Plaintiffs reallege and incorporate by reference each and every allegation set forth in
14 the preceding paragraphs.

15 65. Defendants proposed a contract for the sale of consumer services that waived
16 Plaintiffs' and class members' right to make any statement regarding the seller or its employees,
17 agents, goods and services.

18 66. Defendants' violations were willful and intentional. Defendants intentionally
19 proposed the contracts with the non-disparagement provisions. The 2017 – 2018 Contract
20 corrected typos in the 2016 – 2017 Contract, revealing that Defendants actively reviewed and
21 revised the language from year to year; it was not long-forgotten boilerplate.

22 67. As a direct and foreseeable result of Defendants' violations of Civil Code section
23 1670.8, Plaintiffs and members of the Class were injured in that their free-speech rights under
24 the United States Constitution and the California Constitution were impinged, they were placed
25 in fear of their children's expulsion should they speak out, and they were unable to use
26 technology to crowd-source solutions to real-world problems at the St. Francis School—thus
27 causing those problems to fester, unaddressed.

1 68. Accordingly, Plaintiffs seek on behalf of themselves and the Class a permanent
2 injunction prohibiting Defendants and their affiliates and agents from proposing contracts for the
3 sale of consumer goods or services that waive consumers' rights to make any statement
4 regarding the seller or its employees, agents, goods and services, as well as the civil penalties
5 specified by section 1670.8(c)-(d).

6 **VII. SECOND CAUSE OF ACTION**

7 **For Violations of the Unfair Competition Law, Business & Professions Code Section 17200**

8 *et seq.*

9 **By All Plaintiffs and on Behalf of the Proposed Class**

10 **Against All Defendants**

11 69. Plaintiffs reallege and incorporate by reference each and every allegation set forth in
12 the preceding paragraphs.

13 70. Defendants' conduct violated the law, Cal. Civ. Code § 1670.8, thereby also violating
14 the "unlawful" prong of the Unfair Competition Law ("UCL").

15 71. Additionally, Defendants' conduct violated the "unfair" prong of the UCL. It was
16 unfair to threaten children as young as kindergarten with expulsion merely for sharing honest
17 opinions.

18 72. It is unfair for Plaintiffs and Class members to have to agree to a code of silence in
19 order to enroll their child in school.

20 73. It is unfair, inefficient and dangerous that Californians have to decide whether to
21 enroll their children in the St. Francis School without the benefit of reading the candid reviews of
22 those willing to speak truth to power.

23 74. As a direct and foreseeable result of Defendants' violations of the UCL, Plaintiffs and
24 members of the Class were injured in that their free-speech rights under the United States
25 Constitution and the California Constitution were impinged, they were placed in fear of their
26 children's expulsion should they speak out, and they were unable to use technology to crowd-
27 source solutions to real-world problems at the St. Francis School—thus causing those problems
28 to fester, unaddressed.

1 75. Accordingly, Plaintiffs seek on behalf of themselves and the Class a permanent
2 injunction prohibiting Defendants and their affiliates and agents from proposing contracts for the
3 sale of consumer goods or services that waive consumers' rights to make any statement
4 regarding the seller or its employees, agents, goods and services.

5 VIII. PRAYER FOR RELIEF

6 WHEREFORE, Plaintiffs pray:

7 A. That the Court determine that the claims brought by the Class may be maintained
8 as a class action;

9 B. That leave be granted to amend this Complaint to conform to the evidence
10 presented at trial;

11 C. That judgment be entered in favor of Plaintiffs and against Defendants;

12 D. That the Court adjudge and decree that Defendants' proposal of private gag orders
13 in school enrollment contracts violates section 1670.8 of the Civil Code and the Unfair
14 Competition Law, section 17200, *et seq.* of the Business & Professions Code;

15 E. That Defendants, their affiliates, successors, transferees and assignees, and the
16 officers, directors, partners, agents and employees of each of the foregoing, and all other persons
17 acting or claiming to act on their behalf or in concert with them, be permanently enjoined and
18 restrained from in any manner continuing to propose, enter into or use any contracts waiving
19 students' or parents' rights to make any truthful and otherwise lawful statement regarding
20 Defendants and their employees, agents, goods and services;

21 F. That the Court award each plaintiff and Class member to whom any defendant
22 proposed (whether directly, indirectly or vicariously) an illegal gag order \$5,000 against that
23 defendant for each academic year in which that defendant made such a proposal to such plaintiff
24 or Class member, pursuant to Civil Code section 1670.8(c);

25 G. That, additionally, the Court award each plaintiff and Class member to whom any
26 defendant willfully, intentionally or recklessly proposed (whether directly, indirectly or
27 vicariously) an illegal gag order \$10,000 against that defendant for each academic year in which
28

1 that defendant made such a proposal to such plaintiff or Class member, pursuant to Civil Code
2 section 1670.8(d);

3 H. That Plaintiffs be awarded pre- and post-judgment interest, and that the interest be
4 awarded at the highest legal rate from and after the date of service of the initial Complaint in this
5 action;

6 I. That Plaintiffs recover their costs of suit and reasonable attorneys' fees, as
7 allowed by Code of Civil Procedure section 1021.5 and/or other applicable law; and

8 J. That the Court grant other legal and equitable relief as it may deem just and
9 proper, including such other relief as the Court may deem warranted to redress and prevent
10 recurrence of the suppressive effects of Defendants' gag orders.

11 IX. JURY TRIAL DEMAND

12 Plaintiffs hereby demand trial by jury for all causes of action, claims or issues in this
13 action that are triable as a matter of right to a jury.

14
15 Dated: February 27, 2018

16 Respectfully submitted,

17 /s/ Jon B. Fougner

18 JON B. FUGNER

19 *Attorney for the Plaintiffs and the Proposed Class*