Ayala, et al. v. Archdiocese of Los Angeles, et al. 25CV04033
Hearing Date: July 7, 2026
Demurrer (FAC)

PROPOSED TENTATIVE

Plaintiffs filed a first amended complaint on February 6, 2026 (FAC). Named plaintiffs are the parents of children who attended La Purisima Conception Catholic School and Parish during the 2024-2204 and 2024-2025 academic years, as well as their children, as follows:

- Carolina Ayala (individually and as guardian ad litem for her children Noah Josue Alcala and Johan Ezekian Alcala);
- Mark Guerrero (individually and as guardian ad litem for his child Rey Michael-Aristeo Guerrero);
- Ana Rodriguez (individually and as guardian ad litem for her child Brian Ramirez);
- Adriana Rosales (individually and as guardian ad litem for her child Dante Hernandez-Rosalas);
- Jazmine Relan (individually and as guardian ad litem for her children Lylian Felan, Airel Felan, and Charles Felan);
- Laura Alvarado (individually and as guardian ad litem for Kiara Gwenit Alvarado); and
- Andrea Lissette Barragan and Luis Ivan Archivaldo Barragan.

Named defendants are as follows:

- Archdiocese of Los Angeles Education and Welfare Corporation (Archdiocese) (responsible for La Purisima Conception Catholic School and Parish (La Purisima));
- Idaelia Preciado (current and acting principal at La Purisima);
- Jose Ortiz (a "current and acting priest" at La Purisima); and
- Christina Signorelli (employed by La Purisima as a teacher).

Plaintiffs advance 11 causes of action against all defendants, as follows:1) assault; 2) battery; 3) negligence; 4) intentional infliction of emotional distress; 5) intentional misrepresentation; 6) negligent misrepresentation; 7) breach of contract; 8) breach of the implied covenant of good faith and fair dealing; 9) unfair competition; 10) invasion of privacy; and 11) declaratory relief.

According to the FAC (in its string pleading portion), the parents of the named children (plaintiffs) began to notice "problems with bullying, abuse and neglect of students, and discrimination," at least at the beginning of 2020, which grew worse over time. In paragraph 24, plaintiffs allege that defendant Preciado denied children "access to food and/or water during school hours . . . ." Plaintiffs contend their children "suffered physical pain and medical conditions because [of] Defendants' actions preventing the students from having access to food and water during school hours." Additionally, the children have been discriminated against, harassed, and verbally abused, specifically by defendants Preciado and Signorelli. Additionally, the children have been abused by "another student at La Purisima, N.G.," who is the child of a "close friend of Preciado and Signorelli," and defendants refused to take any preventative action against student N.G; in fact, according to plaintiffs, defendants Preciado and Signorelli retaliated against plaintiffs and did not address the abuse problems. Plaintiffs "continually brought" their concerns to attention of the Archdiocese, to no avail. Plaintiffs also allege that they "sought confidential counseling with defendant] Ortiz," a priest, as plaintiffs are "devout Catholics and sought guidance from their priest. . . ." Plaintiffs believed these conversations were confidential because their communications were made during the confessional. Ortiz "broke confessional confidentiality and breached Plaintiffs' rights to privacy by repeating at public mass from the pulpit and to others within the La Purisima community outside mass statements Plaintiffs made to Ortiz during" the confessional. (¶¶ 32-34.)

Defendants demur to all eleven (11) causes of action. Plaintiffs have not filed opposition, and there is no reply as of this writing.

The court will examine the general arguments advanced by the Archdiocese about whether an adequate basis for its liability has been alleged. The court will then address the merits of the demurrer as to each cause of action in seriatim (with some exceptions). The court will finish with a summary of its conclusions.

A) Archdiocese of Los Angeles Education and Welfare Corporation

Defendant Archdiocese contends a demurrer is appropriate as to all causes of action initially because the complaint erroneously alleges it "does business as La Purisima Conception Catholic School and Parish." The court is limited to the face of the complaint and judicially noticed documents, and nothing offered counters this allegation. A demurrer on this ground is inappropriate.

Defendant Archdiocese also indicates that plaintiffs offer nothing but "boilerplate alter ego" allegations, which are insufficient to establish its liability. The court is not persuaded. Plaintiff alleges that defendant Preciado, defendant Ortiz, and defendant Signorelli, were all "employed by the Diocese," and were allegedly acting with the scope of their employment when the alleged tortious acts occurred. While the allegations are generic (and will encounter problems with regard to intentional torts, as discussed below), they are sufficient to withstand demurrer generally. The demurrer is overruled on this ground as well.

B) First Cause of Action for Assault

Plaintiffs claim that "defendants" caused the children to suffer "physical harm and offensive touching" by preventing them from using the restroom facilities at La Purisima; from eating food and drinking water; and by "allowing Plaintiffs' children to be physically hit by other students," all during school hours. At all relevant times, plaintiffs "by and through their children," "reasonably believed that they were about to be touched in a harmful or offensive way by Defendants and other students at La Purisima."

An assault is a demonstration of an unlawful intent by one person to inflict immediate injury on the person of another then present. A civil action for assault is based upon an invasion of the right of a person to live without being put in fear of personal harm. The essential elements of a cause of action for assault are (1) defendant acted with the intent to cause harmful or offensive contact, or threatened to touch plaintiff in a harmful or offensive manner; 2) plaintiff reasonably believed she was about to be touched in a harmful or offensive manner or it reasonably appeared to plaintiff that defendant was about to carry out the threat; 3) plaintiff did not consent to defendant's conduct; 4) plaintiff was harmed; and 50 defendant's conduct was a substantial factor in causing harm. (*So v. Shin* (2013) 212 Cal.App.4th 652, 668-669; CACI No. 1301.)

As indicated, there are three factual predicates for assault alleged by plaintiffs in the operative pleading: preventing children from using the bathroom; preventing children from eating food during school hours; and allowing other children to physically touch them (i.e., thereby creating a reasonable apprehension that a battery exists). This cause of action directly implicates defendants Preciado, Ortiz, and Signorelli only as the individually named defendants who committed the alleged assaults. Yet plaintiffs fail to explain or to demonstrate how the ***deprivation*** of food or bathroom facilities either individually or collectively creates in plaintiffs a reasonable apprehension of an imminent ***physical touching or contact***, a crucial element of assault. These are acts of omission that align more closely with neglect (when there is duty to allow/provide), not assault. While an omission to act may give rise to liability when there is a duty to act, assault is nevertheless still predicated on the affirmative apprehension of affirmative conduct (so, for examine, allowing a child to walk into traffic knowing the child may get hit by a third person (a reasonable apprehension of contact) may give rise to assault). These two bases as pleaded do not support a cause of action for assault. While the court will afford plaintiff an opportunity to amend, plaintiffs will have to find authority for the proposition that a failure to act (and not an affirmative act) *alone* can support the tort of assault, authority the court has not found itself.

Plaintiff's third basis for assault (i.e., allowing students to physically hit plaintiffs' children), while theoretically possible, suffers from a related but distinct defect. That is, assault is an intentional tort, and requires defendants to act intentionally. This means in turn that the three defendants would have been required to aid and abet or conspire with the students who actually administered the attempted battery on plaintiffs (i.e., if defendants did not administer the acts themselves). Put another way, as third persons are alleged to have attempted to administer the alleged offensive conduct, defendants must have acted with knowledge of their criminal purpose, with an intent to aid them by not doing something they had a duty to do (stop them), all with the intent that assault occur. This can be accomplished only through the prism of aiding and abetting or civil conspiracy, something clearly not alleged. There are insufficient allegations to support assault on this theory as well. Again, the court will afford plaintiffs an opportunity to amend, although the theory seems implausible at best.

The court sustains the demurrer with leave to amend on all three predicates offered for assault.

The court makes one further observation as to this cause of action that relates only to defendant Archdiocese. It is settled that an employer (as Archdiocese is alleged to be) is not liable for all actions of its employees during working hours. An employer (again, such as Archdiocese) will not be liable for an employee's intentional torts if the employee substantially deviates from his or her employment duties for personal purposes. If an employee inflicts an injury out of personal malice, not engendered by the employment or acts out of personal malice, or if the misconduct is not an outgrowth of the employment, the employee is not acting withing the scope of employment for respondeat superior liability. (*Juarez v. San Bernardino City Unified School District* (2024) 106 Cal.App.5th 1213, 1221; see *Samantha v. Aurora Vista Del Mar, LLC* (2022) 77 Cal.App.5th 85, 107-108 [courts have generally held that an employer is not liable under the doctrine of respondeat superior if the motivating emotions are not fairly attributable to worker-related events or conditions; an employee's intentional torts arises out of employment when in the context of the particular enterprise an employee's conduct is not so unusual or startling that it would seem unfair to include the loss from the employer].) Plaintiffs do not make these necessary allegations in the complaint, advancing only generic allegations (as noted above) that the torts occurred during employment. The word "during" is far too amorphous. More must be alleged to establish intentional tort liability. This is another basis to sustain the demurrer.

C) Second Cause of Action for Battery

The same three bases for assault, as noted above, are alleged to support battery. (¶ 51.) The elements of a cause of action for battery are: (1) the defendant touched the plaintiff, or caused the plaintiff to be touched, with the intent to harm or offend the plaintiff; (2) the plaintiff did not consent to the touching; (3) the plaintiff was harmed or offended by the defendant's conduct; and (4) a reasonable person in the plaintiff's position would have been offended by the touching. (*Carlsen v. Koivumaki* (2014) 227 Cal.App.4th 879, 890.)

This causes of action suffer from the same defects as above. Plaintiffs predicate battery on two omissions to act, without any corresponding offensive touching (through deprivation of food and bathroom). Simply put, plaintiffs have failed to show how plaintiffs were offensively touched by defendant's conduct. As for "allowing Plaintiffs children to be touched in a manner to harm of humiliate them," there are no allegations that any of the three individual defendants either aided and abetted or conspired with the claimed children to commit battery (a consummated assault). Finally, as to the Archdiocese, there are no allegations to establish its respondeat superior liability for intentional torts under the same rationale as noted above – that there is a nexus between their employment and the conduct at issue.

The court sustains he demurrer with leave to amend for the same reasons as above.

D) Third Cause of Action for Negligence

Plaintiffs allege that defendants owed them a duty of care to keep them safe, to allow them to use the restrooms and to eat food normally, and to investigate and take appropriate remedial action against instances of bullying, harassment, and discrimination. According to plaintiffs, defendants breached this duty by making racial slurs and derogatory comments to them, denying them access to food and water and restroom facilities, and by allowing other students to continue to bully them without taking preventative action., such as N.G.

Traditional elements associated with negligence apply when educators are sued, as here. In any negligence action, a plaintiff must demonstrate the existence of a legal duty of care, a breach of that duty, and proximate cause linking the breach with resulting injury. (*Roe v. Hesperia Unified School District* (2022) 85 Cal.App.5th 13, 24-25.)

The court does not have to explore each breach alleged by plaintiffs, for if one theory survives the demurrer must be overruled. A demurrer goes to the entire cause of action, not an aspect thereof. (*Fremont Indemnity Co. v. Fremont General Corp*. (2007) 148 Cal.App.4th 97, 119 [a demurrer must dispose of an entire cause of action to be sustained].)

The court disagrees with defendants that plaintiffs have failed to plead a duty of care, which is a legal issue for the court to decide. California law has long imposed on school authorities a duty to supervise at all times the conduct of the children on school grounds and to enforce those rules and regulations necessary for their protection. Indeed, school officials have a special relationship with students, a relationship arising from the mandatory character of school attendance and the comprehensive control exercised by school personnel, analogous in many ways to the relationship between parents and their children. There is a duty to protect students from foreseeable injury at the hand of other students. (*E.I. v. El Segundo Unified School Dist.* (2025) 111 Cal.App.5th 1267, 1281-1282.) That has been adequately alleged.

The court also disagrees with defendant that plaintiffs have failed to plead sufficient facts to show the individual defendants breached this duty of care (and thus establish Archdiocese's respondeat superior liability). Defendants claim specific facts must be pleaded, but that is not the law in California. Ordinarily, negligence may be alleged in general terms, without specific facts showing how the breach or harm occurred. (*Berkley v. Dowds* (2007) 152 Cal.App.4th 518, 527.) There are limits to the degree of generality tolerated, of course, for plaintiff must indicate the acts or omissions which are said to have been negligently performed. (*Ibid.*) Further, plaintiff must allege a causal connection between the negligence and the injury suffered, and that ordinarily is accomplished by implication from the juxtaposition of the allegations of wrongful conduct and harm. Only when the pleaded facts of negligence and injury do not naturally give rise to an inference of causation must plaintiff plead specific facts affording an inference the one caused the others. (*Id.* at p. 528, quoting *Christensen v. Superior Court* (1991) 54 Cal.3d 868, 900-901.)

Plaintiffs have complied with these standards. They have named a particular student as the primary offender of the alleged bullying and physical abuse – N.G. Plaintiffs contend that N.G. verbally and physically abused them, and that the named parents complained to defendants about N.G.'s actions during the 2023-2024 academic year. After this was done, defendants (notably Preciado and Signorelli) "refused to take any form of action against the bullying student, N.G." Further, according to plaintiffs, they "continually brought their concerns to the attention of the Diocese, made multiple complaints against Defendants," and they failed to investigate the complains or take any remedial action. Plaintiffs contend they have suffered "psychological and emotional distress," including stress, humiliation, depression, and mental and physical pain and anguish. While the allegations could certainly have been more precise (and certainly more robust), they withstand demurrer.

The court overrules the demurrer to the third cause of action.

E) *Fourth Cause of Action for Intentional Infliction of Emotional Distress and Tenth Cause of Action for Invasion of Privacy*

The fourth cause of action for intentional infliction of emotional distress seems to rest on conduct by Ortiz, a priest at La Purisima. The elements for this cause of action are as follows: (1) defendant engaged in extreme and outrageous conduct (conduct so extreme as to exceed all bounds of decency in a civilized community) with the intent to cause, or with reckless disregard to the probability of causing, emotional distress; and (2) as a result, plaintiff suffered extreme or severe emotional distress. (*Potter v. Firestone Tire & Rubber Co.* (1993) 6 Cal.4th 965, 1001.) Additionally, " '[i]t must be conduct directed at the plaintiff, or occur in the presence of the plaintiff *of* whom the defendant is aware.' [Citation.] 'The requirement that the defendant's conduct be directed primarily at the plaintiff is a factor which distinguishes intentional infliction of emotional distress from the negligent infliction of such injury.' " (*Id.* at p. 1002; *Berry v. Frazier* (2023) 90 Cal.App.5th 1258, 1273.) As noted in the FAC: "Plaintiffs sought confidential counseling with Ortiz regarding the problems at La Purisima, Preciado's and Signorelli's action, and the Diocese's failure to take action. Plaintiff are devout Catholics. . . ." Plaintiffs met with Ortiz separately, and they reasonable believed the conversations during the confessional were privileged and confidential. Yet on multiple occasions Ortiz "broke confessional confidentiality and breached the rights to privacy by repeating at public mass from the pulpit and to others within the La Purisima community outside of mass, statements Plaintiff made to Ortiz during their confidential counsel and confessional meetings. . . ."

The tenth cause of action advances an invasion of privacy cause of action. The elements of a claim for invasion of privacy are (1) the plaintiff had a reasonable expectation of privacy; (2) the defendant intentionally intruded; (3) the intrusion would be highly offensive to a reasonable person; (4) the plaintiff was harmed; and (5) the defendant's conduct was a substantial factor in causing the harm. (CACI No. 1800.) The factual predicate for this claim rests on the same factual predicate as above - Ortiz's acts as a religious counselor and his role as a Catholic priest and his failure to protect the sanctity of the confessional. Ortiz restated "confidential statements Plaintiffs made to Ortiz in counseling and/or confessional setting from the pulpit during public mass . . . ."

There have been historical problems with tort causes of actions outside the context of sexual misconduct involving religious institutions and ecclesiastical figures. There is no bright-line rule, with cases ultimately concluding that under some circumstances the religion clauses of the state and federal Constitutions pose no impediment to the imposition of tort liability for religious officers. Sometimes, however, they preclude tort liability. On one end of the spectrum is *Nally v. Grace Community Church* (1988) 47 Cal.3d 278, reinforced by the more recent opinion in *Richelle L. v. Roman Catholic Archbishop* (2003) 106 Cal.App.4th 257. In *Nally* our high court observed that the legislative exemption of clergy for licensing requirements applicable to other counselors acknowledges "that access to the clergy for counseling should be free from state-imposed counseling standards, and that 'the secular state is not equipped to ascertain the competence of counseling when performed by those affiliated with religious organizations.' [Citation.]" As the *Nally* court elaborated (and with particular impact here), "[b]ecause of the differing theological views espoused by the myriad of religious in our state and practiced by church members, it would certainly be impractical, and quite possibly unconstitutional. To impose a duty of care on pastoral counselors. Such a duty would necessarily be intertwined with the religious philosophy of a particular denomination or ecclesiastical teachings of the religious entity." (*Id*. at p. 299; see also *Richell L. v. Roman Catholic Archbishop, supra*, 106 Cal.App.4th at p. 269 [*Nally* is widely relied upon for the proposition that there is no independent tort known as "clerical malpractice,'" not only by California courts, but by those elsewhere].)

On the other end of the spectrum is *Molko v. Holy Spirit Assn. (*1988) 46 Cal.App.3d 1092, in which our high court allowed causes of action for fraud and intentional infliction of emotional distress by former members against the Unification Church. Tort liability can be imposed and adjudicated on the basis of neutral principles requiring no inquiry into the validity of religious belief or practice. (*Richelle L., supra*, at p. 278, discussing *Molko* and progeny].) In *Molko*, fraud and intentional infliction of emotional distress were based on deceptive recruitment practices – allegedly inducing plaintiffs by misrepresentation and concealment into knowingly entering an atmosphere in which they were subject to coercive persuasion. This could be done "without questioning the authenticity and force of the Unification Church's religious teachings . . . ." (*Molko, supra*, at p. 1115.) And in *O'Moore v. Driscoll* (1933) 135 Cal.App.770, plaintiff (a Catholic priest) sued a Catholic organization and an ordained priest for false imprisonment when the plaintiff was restrained in an asylum run by the Catholic Church to compel his confession to criminal acts. The court was confronted with the question of whether the acts pleaded involved essentially a matter of ecclesiastical discipline, which would be outside the court's jurisdiction to determine. The court noted that the practice of confessing one's sins is an established religious practice of the Catholic Church. That being said, this general rule did not immunize the defendants from liability for harm the plaintiff suffered where the religious practice was imposed on him *in a coercive environment*. (*Id.* at p. 774.)

The court will apply the rules articulated in *Snyder v. Evangelical Orthodox Church* (1989) 216 Cal.App.3d 297, which attempted to harmonize the rules in *Molko* and *Nally* into a workable formula for trial courts. *Snyder* also appears factually apposite. *Snyder* involved tort claims based on defendant's conduct in revealing details of plaintiff's confidential communications to members of the congregation and public (similar to the claims advanced here).[1] The *Snyder* court noted initially that "[t]he application of tort law to activities of a church in furtherance of its religious beliefs is clearly an exercise of state power, but where the imposition of liability would result in abridging the free exercise of these beliefs, it is barred. [Citation.] That being, said, it held that "appellants are not barred from seeking recovery on the basis of such a claim." (*Id*. at p. 310; see also p. 308 [under the banner of the First Amendment provision on religion, a clergyman may not with impunity defame a person, intentionally inflict serious emotional harm on a parishioner, or commit other torts].) *Snyder* also made it clear that it is insufficient for religious institutions and its players to simply claim "that their conduct was religious in nature" as a basis to preclude the lawsuit. More must be done. (*Id*. at p. 310.)

The *Snyder* court detailed how a court must proceed with the inquiry: "A court must ask two preliminary questions: Is this a religion, and does the course of conduct alleged qualify as a religious expression? If both of these questions can be answered in the affirmative, the court must then ask if the alleged conduct inflicts so much harm that there is compelling state interest in discouraging it which outweighs the values served in allowing religious freedom." (*Id.* at p. 306.) The *Snyder* court observed that plaintiffs therein had not alleged "that the specific acts complained of were conduct engaged in pursuant to church doctrine. . . . The trial court was not told, and we do not know, inter alia, whether it is a canon of respondents' belief that confessions (penitential or not) are revealed to the congregation unless the offender repents; whether it is church practice for the substance of a confession to be shared among church officials; or whether it is consistent with church doctrine to reveal the substance of a confession to anyone outside the church, and if so, under what circumstances." (*Id.* at p. 307.)

We are of course at the pleading stage here. But based on the allegations in the pleading, the court can say with some confidence that the allegations offered to support either of these causes of action are affiliated with religion. Further, also based on the allegations in the pleading, religious doctrine is implicated because the protections relied upon by plaintiffs involve at their

[1] Specifically, plaintiffs confessed to church officials that plaintiffs (Roberson and Snyder) were engaging in an extramarital affair. Church officials disclosed this information to the church board of elders and to numerous other people, as well as the assembled congregation. In *Snyder*, the trial court granted summary judgment for respondents based on its generic claim that the issues were "ecclesiastical in nature." (*Id.* at p. 305.) The appellate court affirmed the trial court's dismissal of the false imprisonment claim but reversed and remanded as to claims involving other tort causes of action, such as intentional infliction of emotional distress and invasion of privacy, directing the trial court to apply the rules identified in this order.

core Catholic ecclesiastical doctrine associated with the sanctity of the confessional -- "***breaking the confidentiality of the confessional*** and sharing private information from the pulpit at mass . . . ." The dispute as pleaded thus implicates Catholic religious doctrine (namely how the Catholic Church treats communications made during the confessional, and why). Plaintiffs do not allege that they were coerced in any way in this process. Further, at this stage, the importance of the state's interest is weighed against the severity of the burden imposed on religion, and as pleaded, the burden engendered by judicial involvement seems significantly prohibitive (at least at this stage, without any briefing). (*Snyder, supra*, at p. 306.) What is being pleaded in essence seems to be "clergy malpractice," something condemned by *Nally.* The court as a result will sustain the demurrer as to be both causes of action.

Leave to amend will be afforded plaintiffs, but with the following strong admonition. Plaintiffs have to distance themselves from the "clergy malpractice" tone and timber of this lawsuit condemned in *Nally*, and find a way to align these two causes of action with *Richelle L., Molko,* and progeny. A standard of care and its breach has to be established that is divorced from Catholic religious doctrine in order to survive demurrer. This will be no easy task, although plaintiffs will be given an opportunity to try.

F) Fifth Cause of Action for Intentional Misrepresentation and Sixth Cause of Action for Negligent Misrepresentation

The predicate for both intentional misrepresentation (fraud or deceit) and negligent misrepresentation is based on claims that defendants (the individual defendants) "represented to Plaintiffs" (¶ 75) that they would 1) abide by all laws and regulations for schools and/or childcare facilities; 2) adequately investigate and take appropriate remedial action against complaints of bullying, discrimination, intimidation, or harassment; 3) provide a safe and loving environment for plaintiffs' children; and 4) protect statements made to Ortiz in counseling and/or confessional meeting as confidential and would not be disclosed to third parties. According to plaintiffs, the representations made by defendants "were false"; made with reckless disregard or negligence of their truth; causing physical and emotional harm.

The essential elements of a cause of action for intentional misrepresentation are (1) a misrepresentation, (2) knowledge of falsity, (3) intent to induce reliance, (4) justifiable reliance, and (5) resulting damage. (*Cansino v. Bank of America* (2014) 224 Cal.App.4th 1462, 1469.) The essential elements of a cause of action for negligent misrepresentation are the same except, with respect to the second element, the defendant need only make a representation of fact with no reasonable grounds for believing the representation was true, rather than making the representation with knowledge of its falsity. (*Chapman v. Skype* (2013) 220 Cal.App.4th 217, 231.) As both are a subspecies of fraud, both must be pleaded with factual specificity. (*Ibid.* [each element of intentional misrepresentation (fraud) must be pleaded with factual particularity]; see *Small v. Fritz Companies, Inc*. (2003) 30 Cal.4th 167, 183–184 [suggesting rule of factual specificity may apply to all causes of action for negligent misrepresentation, and finding allegation of reliance too conclusory in case before it].) This means plaintiffs must allege facts that show "how, when, where, to whom, and by what means the representations were tendered." (*Lazar v. Superior Court* (1996) 12 Cal.4th 631, 645.)

Plaintiffs' complaint falls far short of these requirements. There are no specific facts alleged by any of the key communications at play. Accordingly, more must be alleged. The court sustains the demurrer with leave to amend as to the fifth and sixth causes of action.

G) Seventh Cause of Action for Breach of Contract and Eighth Cause of Action for Breach of the Implied Covenant of Good Faith and Fair Dealing

Plaintiffs allege that defendants and plaintiffs "entered into a valid and binding contract" with defendants "for the care and education of their children," with an express provision of that contract that defendants "would provide a safe and loving environment for Plaintiff's children that would promote their physical, academic, and social growth and development; that Defendants would adequately investigate and take all appropriate remedial action to address any instances of bullying, intimidation, harassment and/or discrimination against Plaintiffs' children; and that Defendants would abide by all laws and regulations pertaining to an education and/or child care facility in the State of California." The breach of the implied covenant of good faith is based on the same allegation —a breach of the same "express provisions" in the breach of contract cause of action.

These allegations mirror the exact same allegations advanced in the negligence cause of action (the third), where the appropriate statutes created the same duties of care. Defendant, however, does not contend that these duties can only be advanced in tort (see, e.g*., Brown v. Compton Unified School Dist*. (1998) 68 Cal.App.4th 114, 117), and the court therefore will assume without deciding at this point that the two contract causes of action can be alleged in the alternative to a tort cause of action. That being said, a breach of contract cause of action does not survive demurrer when plaintiffs fail to explain the nature of the contract in the pleading (i.e., whether it is written or oral or implied in fact). The FAC is silent on this. The breach of the covenant of good faith and fair dealing also fails because plaintiffs have not identified the contractual form. (*Alameda Health System v. Alameda County Employee's Retirement Assn.* (2024) 100 Cal.App.5th 1159, 1190 [a claim for beach of the implied covenant of good faith and fair dealing requires the existence of a contract, whether express or implied].)The breach of the implied covenant of good faith and fair dealing cause of action also seems duplicative of the breach of contract cause of action, based on the same breach and requesting the same damages. (See, e.g., *Careau & Co. v. Security Pacific Business Credit, Inc*. (1990) 222 Cal.App.3d 1371, 1395 [if the allegations do not go beyond a mere contract breach and, relying on the same alleged acts, simply seek the same damages claimed in a companion breach of contract cause of action, they may be disregarded as superfluous and are subject to demurrer].)

The court will sustain the demurrer to the seventh and eighth causes of action with leave to amend.

H) Ninth Cause of Action for Unfair Competition

Plaintiffs contend that defendants violated Business and Professions Code section 17200, et seq., by committing unfair business practices based on what in the end involves the only surviving cause of action for our immediate purposes - negligence (the third cause of action). The ninth cause is entirely derivative of the third cause of action, and that generally would be enough to survive demurrer if the host cause of action survives.

But not this time. The court sustains the demurrer for another reason – lack of standing. Under the unfair competition law, a plaintiffs is entitled to injunctive relief and restitution, but not damages or penalties. (*Espejo v. The Copley Press, Inc*. (2017) 13 Cal.App.5th 329, 375.) Clearly plaintiffs are asking for damages (including punitive damages), not restitution or injunctive relief. (See ¶¶ 117 to 119.) More fundamentally, plaintiffs must have suffered an injury-in-fact, meaning they lost money or property as a result of the unfair competition (to which restitution is the remedy) to have standing. (Bus. & Prof. Code, § 17204; *Korea Supply Co. v. Lockheed Martin Corp.* (2003) 29 Cal.4th 11134, 1150.) Restitution awards are for "money that once had been in the possession of the person to whom it [is[to be restored." *(Cortez v. Purolator Air Filtration Products Co.* (2000) 23 Cal.4th 163, 177.) Attorney's fees and costs, to constitute standing, must result from losses directly caused by anticompetitive conduct. Plaintiffs cannot establish standing to pursue an unfair competition cause of action based on expenses incurred (including attorney fees) to advance the claim (for if they could, the requirement that individuals show they lost money or property "as a result" of the challenged practice in order to have stand to sue under the UCL would be meaningless). (*Two Jinn, Inc. v. Government Payment Service, Inc*. (2015) 233 Cal.App.4th 1321, 1334.) Plaintiffs have failed to articulate a basis for standing under these rules, and it seems unlikely they can.

The court sustains the demurrer without leave to amend unless plaintiffs at the hearing can show a reasonable possibility that they can establish standing (direct losses as result of the negligence) under the unfair competition law, which seems unlikely.

I) Eleventh Cause of Action for Declaratory Relief

" 'The fundamental basis of declaratory relief is the existence of an *actual, present controversy* over a proper subject.' [Citation.]" (*City of Cotati v. Cashman* (2002) 29 Cal.4th 69, 79; Code Civ. Proc., § 1060.) Thus, " '[d]eclaratory relief operates prospectively to declare future rights, rather than to redress past wrongs. [Citation.]' [Citations.]" (*County of San Diego v. State of California* (2008) 164 Cal.App.4th 580, 607.) Plaintiff claims there remains an "actual dispute and controversy" as to the care of Plaintiffs' children at La Purisima and their rights and responsibilities to each other. At the same time, and in the same breadth, plaintiffs allege that a finding that defendants are liable under the other causes of action would be an adequate to remedy. (See ¶ 131.) (See, e.g., *Osseous Technologies of America, Inc. v. DiscoveryOrtho Partners, LLC* (2010) 191 Cal.App.4th 357, 366 [declaration relief is inappropriate where only past wrongs are involved].)

The court sustains the demurrer with leave to amend. As pleaded, damages appear to be an adequate remedy at law. The allegations involving future conduct are vague and desultory, and otherwise potentially undermined by other allegations in the pleading itself, as noted. Plaintiffs have to allege adequately that a future controversy exists for purposes of declaratory relief even if damages are awarded, which they have not done. Because that is possible, leave to amend will be granted.

Summary:

The court overrules the demurrer based on the Archdiocese's claim that a basis for respondeat superior theory has not been identified.

The court overrules the demurer to the third cause of action.

The court sustains the demurrer to the first, second, fifth, sixth, seventh, eighth, and eleventh cause of action, with leave to amend. Plaintiffs should nevertheless think very carefully in any future pleading about narrowing the scope of this lawsuit, as detailed and discussed in this order.

The court sustains the demurrer to the fourth and tenth causes of action, with leave to amend, ***but with the following strong admonition.*** Plaintiffs need to be cognizant of the limits on tort liability for ecclesiastical officers and institutions under the state and federal Constitutions through their respective Establishment Clauses. The more Catholic ecclesiastic doctrine plays a role in determining the scope of tort liability (akin to establishing "clergy malpractice"), the less likely the court can resolve the dispute. *Nally, Malko*, and particularly *Snyder,* cases cited in this order, set the parameters in which the court will act (outside of which it cannot). That is the defect with the two causes of action as pleaded. Plaintiffs should approach the tort claims with great caution in the future keeping in clear sight the judicial parameters established in the cases in any future pleading. If plaintiffs cannot craft these two causes of action within these existing judicial boundaries, a future demurrer is likely to be successful.

The court sustains the demurrer without leave to amend to the ninth cause of action *unless* plaintiffs at the hearing can demonstrate reasonable possibility they can allege proper standing, which seems unlikely.

Plaintiffs have 30 days to file an amended pleading.

The parties are directed to appear either in person or at the hearing. At this stage the court will not entertain a motion to continue the matter.