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8

ENDORSED  
FILED  
ALAMEDA COUNTY

OCT 29 2019

CLERK OF THE SUPERIOR COURT  
Deputy

MARGARET J. DOWNIE

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 FOR THE COUNTY OF ALAMEDA

11 DAVID DUENAS and CHARLES OTT,

12 Plaintiffs,

13 v.

14 DOE 1, a corporation sole, and  
DOES 2 through 12, inclusive,

15 Defendants.  
16  
17

Case Number: **RG 19041044**

**COMPLAINT FOR DAMAGES**

1. Negligent Supervision and/or Retention of An Employee
2. Negligent Supervision of Plaintiffs, minors

28

1 **GENERAL ALLEGATIONS**

2 1. Plaintiff DAVID DUENAS (hereinafter "DAVID") is a natural person who was a  
3 resident of the County of Alameda, State of California, at all relevant times mentioned herein.  
4 Plaintiff DAVID's year of birth is 1964. Plaintiff DAVID was 7 years old when he was first  
5 sexually abused by Father Donald Broderson in or around 1971.

6 2. Plaintiff CHARLES OTT (hereinafter "CHARLES") is a natural person who was a  
7 resident of the County of Alameda, State of California, at all relevant times mentioned herein.  
8 Plaintiff CHARLES's year of birth is 1962. Plaintiff CHARLES was 10 years old when he was  
9 first sexually abused by Father Donald Broderson in or around 1972.

10 3. Defendant DOE 1, a corporation sole, is a religious institution organized under the  
11 laws of the State of California as a corporation sole with its principle place of business in Oakland,  
12 California. Defendant DOE 1, a corporation sole, is responsible for the funding, staffing and  
13 direction of the parishes, parochial schools, fraternal organizations and other facilities and  
14 institutions within the geographic area of the county of Alameda, and also encompasses Contra  
15 Costa County in northern California.

16 4. Father Donald Broderson (hereinafter "ABUSER") was an adult male who was  
17 ordained as a Catholic priest in 1968. At all times material hereto, ABUSER was under the  
18 direct supervision, employ and control of Defendant DOE 1, a corporation sole. ABUSER  
19 physically perpetrated acts of sexual abuse upon Plaintiff DAVID and Plaintiff CHARLES  
20 when Plaintiffs were minors.

21 5. Father Donald Broderson served at Santa Paula in Fremont, California (5/16/68 –  
22 5/15/71), St. Philip Neri in Alameda California (5/15/71 – 2/14/72), St. Joachim in Hayward,  
23 California (2/15/72 – 2/15/73) Most Precious Blood in Concord, California (2/16/73 – 6/14/75), St.  
24 Leonard in Fremont, California (6/15/75 – 1979), St. Raymond in Dublin, California (1979 –  
25 1982), and Transfiguration Church in Castro Valley, California (1982 -1987).

26 6. Father Donald Broderson (hereinafter "ABUSER") was an adult male who was a  
27 priest employed by and/or working on behalf of Defendant DOE 1, a corporation sole. At all times  
28 material hereto, ABUSER was under the direct supervision, employ and control of Defendant DOE

1 1, a corporation sole. ABUSER physically perpetrated acts of childhood sexual abuse upon  
2 Plaintiff DAVID and Plaintiff CHARLES when Plaintiffs were minors.

3 7. The true names and capacities, whether individual, corporate, associate or  
4 otherwise, of DOES 2 through 12 are unknown to Plaintiff DAVID and Plaintiff CHARLES, who  
5 therefore sue said DOE Defendants by such fictitious names. When the true names and capacities  
6 of said DOE Defendants have been ascertained, Plaintiff DAVID and Plaintiff CHARLES will  
7 seek leave of court to amend this Complaint to allege such true names and capacities. Plaintiff  
8 DAVID and Plaintiff CHARLES are informed and believe and based thereon alleges that each of  
9 the Defendants designated as a DOE herein are liable in some manner for the acts, occurrences and  
10 omissions hereinafter alleged.

11 8. Plaintiff DAVID and Plaintiff CHARLES are informed and believe and based  
12 thereon allege that at all times material hereto each Defendant was the agent, servant, employee  
13 and/or representative of each remaining Defendant, and was at all times acting within the course  
14 and scope of said agency, service, employment and/or representation. Unless otherwise indicated,  
15 each Defendant is sued as the agent, servant, employee and/or representative of each other  
16 Defendant. Each Defendant did the acts herein alleged with the permission and consent of each  
17 other Defendants. Defendants ratified, authorized, affirmed, adopted, and concealed each act or  
18 omission of each other Defendant acting as an agent, servant, employee and/or representative.

19 9. At all relevant times alleged here in Plaintiff DAVID was enrolled in and a  
20 parishioner at St. Philip Neri school and church in Alameda, California, which is owned,  
21 administered, operated, controlled, authorized by and staffed by, among others, employees of  
22 Defendant DOE 1, a corporation sole.

23 10. At all relevant times alleged herein, as a student at St. Philip Neri School, and as a  
24 result of Plaintiff DAVID's status as a minor, Defendant DOE 1, a corporation sole owed a duty of  
25 care to Plaintiff DAVID. In addition, Defendant DOE 1, a corporation sole had a special  
26 relationship with Plaintiff DAVID, who was a minor attending St. Philip Neri school. As a result,  
27 Defendant DOE 1, a corporation sole had an affirmative duty to take all reasonable steps to protect  
28 Plaintiff DAVID, who was a minor attending St. Philip Neri school. Each of Plaintiff's parents

1 and/or legal guardians expected Defendant DOE 1, a corporation sole would provide a safe and  
2 supervised environment for Plaintiff DAVID, who was a minor attending St. Philip Neri school.

3 11. At all relevant times alleged herein Plaintiff CHARLES was a parishioner at St.  
4 Joachim's in Hayward, California, which is owned, administered, operated, controlled, authorized  
5 by and staffed by, among others, employees of Defendant DOE 1, a corporation sole.

6 12. As minors, Plaintiff DAVID and Plaintiff CHARLES, attended mass and engaged  
7 in confession with priests employed by Defendant DOE 1, a corporation sole. Accordingly, a  
8 special relationship was formed between Plaintiff DAVID and Plaintiff CHARLES (then minors)  
9 and Defendants. As delineated in California Evidence Code sections 1030-1034, codifying the  
10 clergyman-penitent privilege, the fact that a special relationship between Defendants and  
11 parishioners not only exists, but extends to non-spiritual matters.

12 13. Plaintiff DAVID and Plaintiff CHARLES were minors under the custody and  
13 control of Defendant DOE 1, a corporation sole, who had control over Plaintiff DAVID and  
14 Plaintiff CHARLES's welfare and who were responsible for running the parishes with a duty to  
15 protect Plaintiff DAVID and Plaintiff CHARLES because they were in a special relationship with  
16 Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12. While a  
17 priest/parishioner relationship does not mean it is special per se, it does not follow that a fiduciary  
18 or confidential relationship between a priest and parishioner cannot be created on the  
19 circumstances.

20 14. Plaintiff DAVID and Plaintiff CHARLES were raised in devoutly religious  
21 families, were baptized and confirmed and regularly celebrated weekly mass and received the  
22 sacraments through their Church. Plaintiff DAVID and Plaintiff CHARLES were educated and  
23 taught the theology and tenets of The Roman Catholic Church on matters of faith, morals and  
24 religious doctrine. Plaintiff DAVID and Plaintiff CHARLES therefore developed great  
25 admiration, trust, reverence and respect for, and obedience to, Roman Catholic clergy, who  
26 occupied positions of great influence and persuasion as holy men and authority figures. Plaintiff  
27 DAVID and Plaintiff CHARLES were encouraged to trust, respect and obey ABUSER.

28 15. Plaintiff DAVID first met and came to know ABUSER as his parish priest while

1 attending St. Philip Neri church and school in Alameda, California.

2 16. A major source of funds for Defendant DOE 1, a corporation sole is monies  
3 received from its parishioners in the form of tithing. Another major source of funding for  
4 Defendant DOE 1, a corporation sole and its agents is in the form of tuition for attendance at its  
5 Catholic schools. Defendant DOE 1, a corporation sole benefitted from Plaintiff DAVID and his  
6 parents through tithing and tuition.

7 17. From approximately 1971 - 1974, ABUSER sexually abused Plaintiff DAVID in  
8 the St. Philip Neri rectory and in Plaintiff DAVID's home.

9 18. Plaintiff CHARLES first met and came to know ABUSER as his parish priest while  
10 attending St. Joachim's in Hayward, California. Plaintiff CHARLES joined the Life Youth  
11 Program at St. Joachim's, which was overseen by ABUSER.

12 19. A major source of funds for Defendant DOE 1, a corporation sole is monies  
13 received from its parishioners in the form of tithing. Defendant DOE 1, a corporation sole  
14 benefitted from Plaintiff CHARLES and his parents through tithing.

15 20. From approximately 1972 - 1973, ABUSER sexually abused Plaintiff CHARLES at  
16 a drive-in movie theater, the church rectory and a private residence.

17 21. By placing ABUSER and/or allowing him to remain in his position and function as  
18 parish priest, Defendant DOE 1, a corporation sole, affirmatively represented to minor children  
19 and their families at St. Philip Neri and St. Joachim's, including Plaintiff DAVID and Plaintiff  
20 CHARLES, and their families, that ABUSER did not have a history of committing acts of  
21 misconduct that created a risk for childhood sexual abuse or sexually abusing children and that he  
22 was not danger to children, and that Defendant DOE 1, a corporation sole, had no information to  
23 the contrary.

24 22. Because Defendant DOE 1, a corporation sole, was in a position of superiority and  
25 influence over them, Plaintiff DAVID, Plaintiff CHARLES, and their parents believed and relied  
26 on these misrepresentations.

27 23. In reliance on the Defendant DOE 1, a corporation sole's misrepresentations,  
28 ABUSER was able to gain unsupervised access to Plaintiff DAVID and Plaintiff CHARLES

1 and to sexually abuse them in ABUSER's living quarters at the rectory in St. Philip Neri  
2 Church and School and St. Joachim's.

3 24. Plaintiff DAVID and Plaintiff CHARLES had no reason to suspect that they  
4 had been defrauded before that time. Plaintiff DAVID and Plaintiff CHARLES had no reason  
5 to entertain the idea that Defendant DOE 1, a corporation sole, and Defendants DOES 2  
6 through 12 would place children in harm's way by concealing their knowledge that known  
7 abusers/priests/employees were child molesters and representing that said priests should be  
8 trusted and have unsupervised access to minor parishioners.

9 25. While religious belief is absolutely protected, conduct is not protected and the  
10 actions hereinbelow alleged were illegal secular motivated conduct that is regulated by the law.

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

17 27. Canon law requires Bishops to keep subsecreto files also known as confidential  
18 files. These files are not to be made public.

19 28. Because of problems of sexual misconduct of Catholic clergy, the Catholic Church  
20 and other organizations sponsored treatment centers for priests that had been involved in sexual  
21 misconduct. One of the treatment centers that existed prior to 1982 was in Albuquerque, New  
22 Mexico, and sponsored by the servants of the Paracletes. Another treatment center for priests who  
23 engaged in sexual misconduct was St. Luke's in Suitland, Maryland.

24 29. Sexual abuse of clerics by Catholic clergy has been a reality in the Catholic Church  
25 for centuries but has remained covered by deep secrecy. This secrecy is rooted in the official  
26 policies of the Catholic Church which are applicable to all dioceses and in fact are part of the  
27 practices of each diocese, including Defendant DOE 1, a corporation sole. Sexual abuse of minors  
28 by Catholic clergy and religious leaders became publicly known in the mid 1980's as a result of

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

6 30. All of the procedures required in the so-called "Dallas Charter" have been  
7 previously mandated in the Code of Canon Law and in the 1922 and 1962 documents but were  
8 consistently ignored by Catholic bishops. In place of the required processes, which would have  
9 kept a written record of cases of clergy sexual abuse, the bishops applied a policy of clandestine  
10 transfer of accused priests from one local or diocesan assignment to another or from one diocese to  
11 another. The receiving parishioners and often the receiving pastors were not informed of any  
12 accusations of sexual abuse of minors.

13 31. Refusal to disclose sexually abusing clerics to parishioners and even fellow clerics  
14 has been one way utilized by Defendant DOE 1, a corporation sole to maintain secrecy. Another  
15 has been to use various forms of persuasion on victims or their families to convince them to remain  
16 silent about incidents of abuse. These forms of persuasion have included methods that have  
17 ranged from sympathetic attempts to gain silence to direct intimidation to various kinds of threats.  
18 In doing so, the clergy involved, from bishops to priests, have relied on their power to overwhelm  
19 victims and their families.

20 32. Defendant DOE 1, a corporation sole, and Defendant DOES 2 through 12 are  
21 estopped from asserting a statute of limitations defense. Defendant DOE 1, a corporation sole, and  
22 Defendant DOES 2 through 12 knowing false representations as set forth below prevent them from  
23 being able to use any statute of limitations to protect themselves. Defendant DOE 1, a corporation  
24 sole, and Defendant DOES 2 through 12 were aware of the true facts when misrepresentations  
25 were made. Defendant DOE 1, a corporation sole, and Defendant DOES 2 through 12, in effect,  
26 ratified Defendant DOE 1, a corporation sole's employee's (ABUSER) conduct by failing to report  
27 him to law enforcement authorities, failing to notify police, Child Protective Services, prosecutors,  
28 parishioners and the laity. Defendant DOE 1, a corporation sole, and Defendant DOES 2 through

1 12 intended that its representations would be acted upon by Plaintiff DAVID and Plaintiff  
2 CHARLES. Plaintiff DAVID and Plaintiff CHARLES relied on Defendant DOE 1, a corporation  
3 sole, and Defendant DOES 2 through 12's conduct to their detriment. Had Plaintiff DAVID and  
4 Plaintiff CHARLES, and their parents known what Defendant DOE 1, a corporation sole, and  
5 Defendant DOES 2 through 12 knew – that ABUSER was known by Defendant DOE 1, a  
6 corporation sole, to be a pedophile, Plaintiff DAVID and Plaintiff CHARLES would not have been  
7 sexually abused by ABUSER.

8 33. Defendant DOE 1, a corporation sole, and Defendant DOES 2 through 12 are also  
9 estopped from asserting a statute of limitations defense, because starting in or around 1975,  
10 Defendant DOE 1, a corporation sole, and Defendant DOES 2 through 12 engaged in a pattern of  
11 conduct designed to minimize the liabilities of Defendant DOE 1, a corporation sole, and  
12 Defendant DOES 2 through 12 because of ABUSER's conduct. Defendant DOE 1, a corporation  
13 sole, and Defendant DOES 2 through 12 knew ABUSER had an extensive history of sexually  
14 abusing Catholic minors while he was serving as a priest at St. Philip Neri church and school and  
15 St. Joachim's. Notwithstanding this knowledge, Defendant DOE 1, a corporation sole, and  
16 Defendant DOES 2 through 12 engaged in conduct which precludes it from asserting a statute of  
17 limitations defense because it includes aiding and abetting ABUSER's criminal conduct in  
18 continuing to place him in work around children despite knowledge of his misconduct that created  
19 a risk of childhood sexual abuse.

20 34. Defendant DOE 1, a corporation sole, and Defendant DOES 2 through 12 are  
21 further estopped from asserting a statute of limitations defense because, as with other Roman  
22 Catholic institutions, it has systematically for many years thwarted investigations of pedophile  
23 priests, while simultaneously attempting to pacify their victims and families through use of church  
24 loyalty. This has routinely included steering victims of abuse and their families to counselors loyal  
25 to the church, while at the same time failing to inform those victims and their families that they  
26 have legal rights and that there are statutes of limitations that could preclude later bringing an  
27 action. When such victims unknowingly wait until their limitations have expired, Defendant DOE  
28 1, a corporation sole, and Defendant DOES 2 through 12 and other Roman Catholic entities have



1 then argued for dismissal of the victim’s case because the statutes of limitations have expired.

2 35. On February 18, 2019, Defendant DOE 1, a corporation sole, released its list of  
3 priests credibly accused of childhood sexual abuse, which identifies ABUSER. Defendant DOE 1,  
4 a corporation sole Bishop Michael C. Barber identifies ABUSER’s sexual abuse of minor children  
5 as occurring in the “1970s”.

6 36. Plaintiff DAVID and Plaintiff CHARLES are filing this Complaint pursuant to  
7 California Code of Civil Procedure section 340.1.

8 37. Defendant DOE 1, a corporation sole, and / or Defendant DOES 2 through 12 made  
9 a concerted effort to hide evidence relating to childhood sexual assault and as a result, engaged in a  
10 “cover up” as defined by section 340.1 of the California Code of Civil Procedure. As a result of  
11 Defendant DOE 1, a corporation sole, and / or Defendants DOES though 12’s “cover up”, Plaintiff  
12 DAVID and Plaintiff CHARLES were sexually assaulted as children. Plaintiff DAVID and  
13 Plaintiff CHARLES are entitled to recover treble damages against Defendant DOE 1, a corporation  
14 sole, and / or Defendants DOES 2 though 12.

15 38. Defendant DOE 1, a corporation sole has its primary place of business in Alameda  
16 County; therefore, venue is properly placed in Alameda County.

17 **FIRST CAUSE OF ACTION**  
18 **Negligent Supervision and/or Retention of An Employee**  
**(Against Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12)**

19 39. Plaintiff DAVID and Plaintiff CHARLES incorporate herein by reference each and  
20 every General Allegation as if fully set forth herein and with the same force and effect.

21 40. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12 are  
22 liable for the acts and omissions of their employees, including ABUSER, acting within the course  
23 and scope of his employment. At all times herein, Defendant DOE 1, a corporation sole, and  
24 Defendants DOES 2 through 12 employees, including ABUSER, were acting within the course and  
25 scope of their employment.

26 41. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12 had a  
27 duty supervise to and/or no longer retain ABUSER given ABUSER’s misconduct that created a  
28 risk of childhood sexual abuse.

1           42. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12 breached  
2 their duty of care.

3           43. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12 by and  
4 through their agents, servants and employees, knew or had reason to know of ABUSER's  
5 misconduct that created a risk of childhood sexual abuse and/or that ABUSER was a dangerous  
6 and unfit agent. Despite such knowledge, Defendant DOE 1, a corporation sole, and Defendants  
7 DOES 2 through 12 negligently supervised and/or retained ABUSER in positions of trust and  
8 authority as a priest. ABUSER therefore was able to commit harmful and wrongful acts, including  
9 acts of childhood sexual abuse, upon Plaintiff DAVID and Plaintiff CHARLES. Defendant DOE 1,  
10 a corporation sole, and Defendants DOES 2 through 12 failed to take reasonable steps and failed to  
11 implement reasonable safeguards to avoid acts of childhood sexual abuse in the future by  
12 ABUSER, including but not limited to preventing or avoiding placement of ABUSER in a function  
13 or environment in which contact with children is an inherent aspect of that function or  
14 environment.

15           44. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12's breach  
16 was a substantial factor in ABUSER's childhood sexual abuse of Plaintiff DAVID and Plaintiff  
17 CHARLES.

18           45. As a direct, legal, and proximate cause of Defendant DOE 1, a corporation sole, and  
19 Defendants DOES 2 through 12's conduct/misconduct and negligence, ABUSER committed acts  
20 of childhood sexual abuse against Plaintiff DAVID and Plaintiff CHARLES.

21           46. As a result of the conduct herein alleged, Plaintiff DAVID and Plaintiff CHARLES  
22 suffered economic, physical, psychological and emotional harm as more fully set forth below.

23                           **SECOND CAUSE OF ACTION**

24                   **Negligent Supervision of Plaintiff DAVID and Plaintiff CHARLES, minors  
(Against Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12)**

25           47. Plaintiff DAVID and Plaintiff CHARLES reallege and incorporate by reference the  
26 First Cause of Action as if said allegations were fully set forth herein and with the same force and  
27 effect.  
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1           48. Plaintiff DAVID and Plaintiff CHARLES's Second Cause of Action is an  
2 alternative additional theory of liability as alleged against Defendant DOE 1, a corporation sole,  
3 and Defendants DOES 2 through 12.

4           49. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12 are  
5 liable for the acts and omissions of their employees, including ABUSER, acting within the course  
6 and scope of his employment. At all times herein, Defendant DOE 1, a corporation sole, and  
7 Defendants DOES 2 through 12 employees, including ABUSER, were acting within the course and  
8 scope of their employment.

9           50. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12 had a  
10 duty to provide supervision of Plaintiff DAVID and Plaintiff CHARLES, minors, and to use  
11 reasonable care in supervising Plaintiff DAVID and Plaintiff CHARLES , minors when Plaintiff  
12 DAVID and Plaintiff CHARLES, minors, were involved in activities sponsored, supervised,  
13 organized, or directed by Defendant DOE 1, a corporation sole, and Defendants DOES 2 through  
14 12, or their agents and employees.

15           51. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12 breached  
16 their duty of care.

17           52. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12  
18 negligently failed to supervise Plaintiff DAVID and Plaintiff CHARLES, minors, and failed to use  
19 reasonable care in protecting Plaintiff DAVID and Plaintiff CHARLES, minors, from ABUSER's  
20 misconduct that created a risk of childhood sexual abuse, while Plaintiff DAVID and Plaintiff  
21 CHARLES, minors, were involved in activities sponsored, supervised, organized, or directed by  
22 Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12, or their agents and  
23 employees.

24           53. Defendant DOE 1, a corporation sole, and Defendants DOES 2 through 12's breach  
25 was a substantial factor in ABUSER's childhood sexual abuse of Plaintiff DAVID and Plaintiff  
26 CHARLES.

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1 amounts of losses when they are ascertained.

2 **WHEREFORE**, Plaintiff DAVID and Plaintiff CHARLES pray for judgment as  
3 follows:

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

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

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

10 4. For prejudgment interest pursuant to statute;

11 5. For treble damages against Defendant DOE 1, a corporation sole, and/or  
12 Defendants DOES 2 through 12, as authorized by section 340.1 of the Code of Civil  
13 Procedure;

14 6. For costs of suit herein; and

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

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18 Dated: October 25, 2019

LAW OFFICES OF JOSEPH C. GEORGE, Ph.D.

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By:  \_\_\_\_\_

21

Joseph C. George  
Attorney for Plaintiffs  
**DAVID DUENAS and CHARLES OTT**

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