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11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
in her capacity as Guardian ad Litem for
15 RACHEL LOMAS and AMBER LOMAS,
Plaintiffs,
16 v.
17 FATHER JOSEPH ILLO; FATHER FRANCIS
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
18 FATHER RICHARD RYAN; BISHOP STEVEN
BLAIRE; THE DIOCESE OF STOCKTON;
19 DOES 1 through 100,
Defendants.

No. CV 018440
PLAINTIFFS' REPLY
MEMORANDUM OF POINTS
IN SUPPORT OF
MOTION FOR ATTORNEYS'
FEES
Date: 30 June 2005
Time: 9:00 A.M.
Department: 41
Judge: Hon. Elizabeth Humphreys

22 **A. FATHER ILLO'S REFUSAL TO ADMIT THAT HE MADE THE**
23 **STATEMENT WAS NOT REASONABLE.**

24 Defendant Father Joseph Illo comes to this court with a curious argument that he "had
25 reasonable grounds to believe he could prevail on the matter". Father Illo's argument, at pages 5
26 through 7 of his opposition, is that because the issue of whether he made the statement or not was
27

1 one of credibility and because it was “never determined by uncontroverted evidence ...”, that his
2 denial was reasonable and not subject to sanction. Father Illo’s argument seems to be that his denial
3 of making the statement was reasonable because the issue was “hotly contested”; translated into
4 common English, it means that Father Illo denied making the statement because he believed he
5 could convince the jury that he did not make it. But, the jury decided that he did make the
6 statement, and to follow Father Illo’s argument to its logical conclusion, fees should not be awarded
7 if a liar believes he can get away with it. That cannot be the law.

8 Father Illo’s reference to *Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48 [21 Cal.Rptr. 238],
9 is completely inappropriate. First, a large basis of the *Haseltine* court’s opinion is based on the fact
10 that in 1962 Request for Admissions were not considered to be a part of discovery. (*Id.* at 61 [21
11 Cal.Rptr. at 247]) Of course, the Civil Discovery Act of 1986 changed that; Requests for Admissions
12 are now specifically a discovery technique. (*Brigante v. Huang* (1993) 20 Cal.App.4th 1569, 1578 [25
13 Cal.Rptr.2d 354, 359-60], disapproved on other grds., *Wilcox v. Birtwhistle* (1999) 21 Cal.4th 973,
14 982, fn. 12 [90 Cal.Rptr.2d 260, 267, fn. 12]) Additionally, in *Haseltine* “key issues were presented
15 regarding the validity of the characterizations reflected in the parties’ books, and the status of the
16 books themselves. The issues raised were hotly contested and difficult to resolve, the record
17 reflecting that the court repeatedly sought the argument of counsel as an aid in reaching toward an
18 equitable result.” (*Haseltine v. Haseltine* (1962) 203 Cal.App.2d 48, 61 [21 Cal.Rptr. 238, 247]) Here,
19 unlike *Haseltine*, there was nothing left to interpretation; either Father Illo made the statement or he
20 didn’t. He denied making it, requiring plaintiffs to prove that he made the statement. The jury
21 unequivocally decided that he made the statement, and there is simply no room for interpretation
22 error in his denial.

23 Additionally, *Haseltine* has been roundly criticized.

24 Finally, in considering this issue, a court may properly consider whether at
25 the time the denial was made the party making the denial held a reasonably
26 entertained good faith belief that the party would prevail on the issue at trial. (Cf.
27 Fed.Rules Civ.Proc., rule 37(c).) In this regard, we disagree with the suggestion in
28 *Haseltine v. Haseltine*, *supra*, 203 Cal.App.2d 48, 61, 21 Cal.Rptr. 238, that it is enough
for the party making the denial to “hotly contest” the issue. In our view, there must

1 be some reasonable basis for contesting the issue in question before sanctions can be
2 avoided.
3 (*Brooks v. American Broadcasting Company* (1986) 179 Cal.App.3d 500, 511 [224 Cal.Rptr. 838, 844])
4 In sum, the interpretation of *Haseltine* as suggested by counsel is absurd, and the *Brooks* reasoning
5 more persuasive. And, given that, Father Illo could not possibly have had any reasonable basis for
6 making the denial other than he thought he could get away with it and, of course, that is patently
7 unreasonable.

8 The motion must be granted.

9
10 **B. THE ADMISSION SOUGHT WAS OF CRITICAL IMPORTANCE**

11
12 Father Illo argues that the statement was of no critical importance because he claims it was
13 necessary only for the defamation cause of action. Not so. The statement was the lynchpin of
14 plaintiffs' case for Amber regarding the events of 11 September 2001. To plaintiffs' counsel's way
15 of thinking, it was the most outrageous statement imaginable to be made to a 10 year old about her
16 single mother, especially coming from a priest.

17 With respect to the issue that an admission would have increased the prospect of settlement,
18 this court must remember that current counsel is new to this case, having been retained only after
19 the failed mediation in November 2004. At that point, Father Illo's denial had been on record for
20 nearly two years, and it continued until the jury's verdict (and perhaps even to today). Had Father
21 Illo admitted that he had made such an outrageous statement early in the litigation, his counsel and
22 his superiors may very well have had a much different perspective on the case at the onset, which
23 would have fostered settlement. By the time current counsel entered the case, the lines were drawn
24 and the parties in trial mode. The argument made by plaintiffs regarding potential settlement was
25 not made in an attempt to mislead the court nor to curry sympathy; it was made to give the court
26 the benefit of the opinion of plaintiffs.

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C. IT IS FOR THIS COURT TO DETERMINE A REASONABLE ATTORNEYS' FEE.

Father Illo accuses plaintiffs' counsel's request for fees as being "tantamount to perjury", which is a curious statement given the reason fees are being requested in the first place. Father Illo is unclear as to what he is arguing with respect to his claim: is he saying that the hours were not expended, or is he saying that they were not reasonably expended in proving the matter? With respect to the former, Father Illo brings not one shred of evidence that the hours were not expended, and the detail presented by plaintiffs is substantial and uncontroverted.

With respect to the amount of a reasonable fee, counsel for plaintiffs have given the court their best estimate of how the hours should be apportioned, and their reasons therefor. They explain their strategy, and why, in their opinion, the request is accurate and reasonable. They explain why they believe that Father Illo's deposition would not have solved the issue, and Father Illo's denial of making the comment while under oath at trial is strong evidence that a deposition would have done nothing more than foster yet another denial. Most certainly Father Illo's deposition would only have increased the request because his denial was a virtual certainty.

Thus, as is the law, and as plaintiffs argued in their moving papers, this court must determine the reasonable fee, and plaintiffs have provided accurate documentation and a reasonable explanation for their request.

The motion must be granted.

D. THE REQUEST FOR SANCTIONS MUST BE DENIED

Father Illo asks for sanctions for having to respond to this motion. As argued above and in plaintiffs' moving papers, this Court must award a reasonable attorneys' fee because of Father Illo's

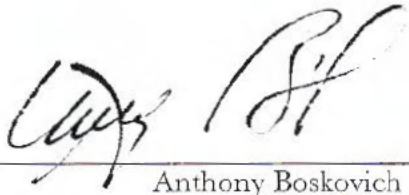
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1 unreasonable failure to admit making the statement. Regardless of this court's finding with respect
2 to the amount of reasonable fees and expenses, the notion is anything but frivolous.

3 Interestingly, the request for sanctions actually bolsters plaintiffs' request for fees. In his
4 declaration, Mr. Kozina states that he was required to expend a minimum of 16 hours in opposing
5 the motion. All that for a 10 page opposition and a short court hearing. When compared to the
6 monumental task that plaintiffs faced in proving to a jury that Father Illo made the comment, Father
7 Illo actually admits to this court that legal work takes a considerable amount of time, and that
8 plaintiffs' claim is more than reasonable.

9 Therefore, the request for sanctions must be denied, and plaintiffs' motion granted in its
10 entirety.

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12 Dated: 22 June 2005

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19 _____
20 Anthony Boskovich
21 Attorney for plaintiffs
22
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PC FILED
SUPERIOR COURT - STOCKTON

05 JUN 17 PM 3:34

BY *[Signature]* CLERK

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10 Attorneys for Defendants
Father Joseph Illo, Monsignor Richard J. Ryan, Bishop
11 Stephen E. Blaire, And The Roman Catholic Bishop Of Stockton,
a Corporation Sole

12
13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

14
15 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE NO. CV018440**
16 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,) DEFENDANTS' OPPOSITION TO PLAINTIFFS'
17 **Plaintiffs,) MOTION FOR ATTORNEYS' FEES**
18 **vs.) DATE: JUNE 30, 2005**
19 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA) TIME: 9:00 A.M.**
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,) DEPARTMENT: 41**
21 **BISHOP STEVEN BLAIRE AND THE DIOCESE) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS**
OF STOCKTON, ET AL.,)
22 **Defendants.)**
23 **)**

24 Defendants, FATHER JOSEPH ILLO, MONSIGNOR RICHARD RYAN, BISHOP
25 STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a
26 Corporation Sole (Hereinafter collectively referred to as DEFENDANTS), herein opposes
27 Plaintiffs' motion for attorneys' fees.

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INTRODUCTION/SUMMARY OF ARGUMENT

Plaintiffs and their attorneys just don't know when to quit. In yet another effort to extort some sort of recovery from Defendants, Plaintiffs are now seeking to recover attorneys' fees under Code of Civil Procedure Section 2033(o) based on FATHER JOSEPH ILLO's (hereinafter ILLO) failure to admit that he made the statement "all your mother wants to do is have sex with me" to AMBER LOMAS on September 11, 2001.

It is well established law that a party may only recover attorneys' fees by way of contractual provision or statutory authority. Here, Plaintiffs are attempting to recover an exorbitant amount in attorneys' fees under Code of Civil Procedure Section 2033(o). In determining whether attorneys' fees are recoverable under Section 2033(o), the court must determine if the admission sought was of substantial importance and whether or not the party failing to make the admission had reasonable grounds to believe they would prevail on the matter. If the court determines that the admission sought was of no substantial importance or that the party making the request had reasonable grounds to believe they would prevail on the matter, an award of attorneys fees is improper. Furthermore, only reasonable attorneys' fees are recoverable. Code of Civil Procedure Section 2033(o)

Plaintiffs are not entitled to recover any amount in attorneys' fees under Code of Civil Procedure Section 2033(o) because the admission sought was of no substantial importance and ILLO had reasonable grounds to believe he would prevail on the matter. In fact, the position taken in Plaintiffs' own moving papers is inconsistent with the jury verdict on which they rely. Plaintiffs' position is based in large part on their assertion that the jury determined ILLO was uncredible. It is interesting to note that the jury verdict is in fact evidence that the jury believed at least a portion of ILLO's testimony, namely that he did not make the statement "Kathleen Machado is stalking me". (See Jury Verdict P.3 attached to the Declaration of Vladimir F.

1 Kozina as Exhibit 1) Furthermore, if the key to recovery for Plaintiffs was attacking the
2 credibility of ILLO, why didn't they recover on any of the remaining causes of action? Reason
3 dictates that if Plaintiffs are to In addition, Plaintiffs are seeking to recover fees that are
4 completely unreasonable and unrelated to proving the truth of the matter of the admission sought.

5
6 **ARGUMENT**

7 **A. PLAINTIFFS ARE NOT ENTITLED TO ATTORNEYS' FEES UNDER**
8 **CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 2033**

9 **1. The Admission Sought Was Of No Substantial Importance**

10 For the court to properly award attorneys' fees as sanctions under Code of Civil
11 Procedure Section 2033(o), the admission sought must have been of substantial importance. A
12 request for admission will be of substantial importance when the subject of the matter requested
13 for admission has at least some direct relationship to one of the central issues in the case. A
14 central issue in the case is one which, if not proven, would have altered the results in the case.
15 Wimbly v. Derby Cycle Corp. (1997) 56 Cal.App. 4th 618, 634-635.
16

17 The admission sought by Plaintiffs that is the basis of their motion for attorneys' fees was
18 of no substantial importance. Whether or not ILLO made the statement "all your mother wants to
19 do is have sex with me" to AMBER LOMAS on September 11, 2001 was not a central issue in
20 the case. The central issues in this case were whether or not AMBER LOMAS and RACHEL
21 LOMAS were sexually molested by FATHER FRANCIS ARAKAL (hereinafter ARAKAL) and
22 whether or not AMBER LOMAS suffered emotional distress as a result of the conduct of ILLO
23 and ARAKAL on September 11, 2001. It was not necessary for Plaintiffs to prove that ILLO
24 made the statement in order to establish any element of their causes of action other than the
25 defamation cause of action by KATHLEEN MACHADO. As evidenced by the jury verdict
26 forms, the jury's finding that ILLO made the statement was in fact in relation to the defamation
27
28

1 cause of action and nothing else. In addition, although the jury apparently believed that ILLO
2 made the statement, they chose not to award any damages to KATHLEEN MACHADO.

3 It was not necessary for Plaintiffs to prove ILLO made the statement in order to recover
4 on any of their other causes of action. This is clear as to the causes of action relative to the
5 allegations of sexual molestation. In addition, it would be pure speculation to assume it was
6 necessary to prove the statement was made in order for AMBER LOMAS to recover on her
7 emotional distress cause of action. AMBER LOMAS' cause of action for emotional distress was
8 based on the conduct of ILLO and ARAKAL on September 11, 2001 as opposed to any particular
9 statement made to AMBER LOMAS. A majority of the testimony offered regarding this claim
10 was aimed at manner in which AMBER LOMAS was addressed by ILLO and ARAKAL on that
11 day. Essentially she felt ILLO and ARAKAL were unsympathetic to her concerns and responded
12 by placing her in a room and yelling at her. It was the manner in which she was addressed and
13 the manner in which the situation was handled that was the basis of AMBER LOMAS' cause of
14 action for emotional distress, not whether or not ILLO made any specific statement. This is
15 evidenced by the fact that the jury determined that ILLO and ARAKAL were both responsible
16 for the emotional distress suffered by AMBER LOMAS. (See Jury Verdict P.3 attached to the
17 Declaration of Vladimir F. Kozina as Exhibit 1).

18
19
20 In an attempt to gain the sympathy of the court Plaintiffs assert in the final paragraph of
21 their moving papers that the admission sought was of such substantial importance that an
22 admission by ILLO that he made the statement "all your mother wants to do is have sex with me"
23 might very well have fostered a settlement of the entire matter. This assertion is completely false
24 and an attempt to mislead the court. Whether or not ILLO made that statement is entirely
25 irrelevant to the allegations of sexual molestation on which this litigation was based. An
26 admission by ILLO that such statement was made would have done nothing to aid in settling this
27 matter prior to trial and for Plaintiffs to assert such is a complete misrepresentation.
28

1 contest liability for the underlying accident, thus obviating the need for proof on that issue. Id. at
2 864. In Brooks v. American Broadcasting Company defendants requested plaintiff to admit that
3 the truck he was operating was over the centerline of a roadway. Plaintiff denied this in the face
4 of a highway patrol report that concluded that Brooks's truck had to have been over the centerline
5 of the road based on the tire marks it had made on the pavement. Brooks v. American
6 Broadcasting Company (1986) 179 Cal.App.3d 500, 511-512. Wimberly v. Derby Cycle
7 Corporation was a products liability action in which plaintiff sought admissions from defendant
8 regarding the nature of the defect in a bicycle and causation. At the time defendant served their
9 denials, they knew, or should have known, that they had no expert who could testify in order to
10 contradict plaintiff's evidence as to the nature of the defect and causation. As such, plaintiffs
11 went on to prove the truth of the matters that were the subject of the requests. Wimberly v.
12 Derby Cycle (1997) 56 Cal.App.4th 618. Rosales v. Thermex-Thermatron, Inc. is also a clear
13 case of attorney's fees being awarded when a denial was served on an issue that was
14 subsequently proven by uncontroverted evidence. This was also a products liability case.
15 Plaintiff made 136 requests for admissions that directly related to the issue of successor liability.
16
17 Nineteen times Thermex-Thermatron responded that it was not Thermatron. However, in
18 summation to the jury Thermex-Thermatron's attorney "They are Thermatron, they testified
19 they're Thermatron." There previously served denial was quite obviously false. Rosales v.
20 Thermex-Thermatron, Inc. (1998) 67 Cal.App4th 187.
21

22
23 These cases were all decided on substantially different facts than our case. Here, it was
24 never determined by uncontroverted evidence that ILLO made the statement "all your mother
25 wants to do is have sex with me" to AMBER LOMAS on September 1, 2001. However, even in
26 the face of uncontroverted evidence to the contrary, a party may still be reasonable in denying a
27 request for admission.
28

1 Haseltine v. Haseltine was a case centered on a marriage dissolution. (1962) 203
2 Cal.App. 2d 48. During the course of litigation defendant propounded a list of 27 requests for
3 admissions, with related interrogatories, on plaintiff. Plaintiff denied a request to admit that
4 funds advanced from her separate estate were voluntary contributions with no agreement for
5 repayment. Defendants argue that it was proven during the course of trial that funds advanced
6 from plaintiff's separate estate were in fact voluntary contributions with no agreement for
7 repayment and that they should therefore be entitled to attorney's fees expending in proving such
8 point. Id. at 61.

9
10 During the course of trial, key issues were addressed regarding the validity of the
11 characterizations reflected in the parties' books, and the status of the books themselves. Id. at 61.
12 The issues raised were hotly contested and difficult to resolve, the record reflecting that the court
13 repeatedly sought the argument of counsel as an aid in reaching toward an equitable result. Many
14 of the requests and related interrogatories intruded into the midst of these controversies. Id. at
15 61. The trial court ruled, and appellate court upheld, that defendant was not entitled to attorneys'
16 fees under Section 2033. In doing so the court went on to say "the fact that matters denied were
17 subsequently proved by uncontradicted evidence, if true, does not make the denial unreasonable
18 per se, in retrospect. Id. at 60. Furthermore, "requests for admissions are not instruments of
19 discovery. Section 2033, like its counterpart Federal Rule 36, contains closely knit provisions
20 calculated to compel admissions as to all things that cannot reasonably be controverted." Id. at
21 61.
22

23 Nearly every case that reaches the point of trial involves a determination by the court or a
24 jury as to the credibility of the parties; the present case was no different. As Plaintiffs agree, the
25 issue of ILLO's credibility and whether or not such statement was made was a hotly contested
26 issue throughout the course of this trial. However, no uncontradicted evidence was presented that
27 proves ILLO made the statement "all your mother wants to do is have sex with me" to AMBER
28

1 LOMAS. Such evidence does not exist. It remained ILLO's contention throughout the course of
2 litigation that he did not make such a statement to AMBER LOMAS on September 11, 2001.

3 The jury was presented with evidence during the course of this trial by both sides and
4 asked to determine who they felt was telling the truth. The fact that the jury did not believe
5 everything that ILLO said is not evidence that he was unreasonable in failing to admit that he
6 made the statement. In fact, it is interesting to note that the jury verdict itself is evidence that the
7 jury believed at least a portion of ILLO's testimony, namely that he did not make the statement
8 "Kathleen Machado is stalking me". (See Jury Verdict P.3 attached to the Declaration of
9 Vladimir F. Kozina as Exhibit 1).

11 **3. The Attorneys' Fees Sought Are Not Reasonable**

12 It is Defendants position that Plaintiffs are not entitled to recover any amount in
13 attorneys' fees. However, if the court is inclined to award such fees, it is only within the court's
14 discretion to award those fees that were reasonably incurred to prove that ILLO made the
15 statement "all your mother wants to do is have sex with me" to AMBER LOMAS on September
16 11, 2001. Code of Civil Procedure Section 2033(o) The Court of Appeals has held that a trial
17 court abuses it's discretion when it grants a request for attorneys fees based on a denial to a
18 request for admission when the award includes expenses incurred in proving matters other than
19 those within the scope of the request fro admissions. Garcia v. Hyster Co. (1994) 28 Cal.App.4th
20 724.

21
22 Plaintiffs' moving papers and supporting declarations assert \$72,287.08 in attorneys' fees
23 was expended by Anthony Boskovich and George MacKoul in order to prove that ILLO made
24 the statement "all your mother wants to do is have sex with me" to AMBER LOMAS on
25 September 11, 2001. This assertion is tantamount to perjury. As officers of court, Anthony
26 Boskovich and George MacKoul have a duty to only present that which is true and correct. In
27 reviewing their declaration supporting Plaintiffs' motion, it is more than obvious that the amounts
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1 being claimed for time spent to prove this statement was made were not in fact necessary and
2 incurred for such purpose. Plaintiffs' claim that based on ILLO's failure to admit to making the
3 statement they were forced to engage in a litigation strategy based on attacking the character of
4 ILLO. As discussed above, it is the nature of litigation to address the credibility of the parties.
5 The jury made a determination of ILLO's credibility after hearing the testimony presented during
6 the course of trial.

7
8 Plaintiffs cannot honestly portray to this court that the \$72,287.08 in attorneys' fees
9 outlined in the declarations of Anthony Boskovich and George MacKoul would not have been
10 expended if only ILLO would have admitted to making the statement "all your mother wants to
11 do is have sex with me" to AMBER LOMAS. If Plaintiffs truly wanted to prove whether or not
12 ILLO made the statement, the most direct path would have been to take his deposition. In fact, at
13 one point the deposition of ILLO was scheduled, but Plaintiffs subsequently changed their mind
14 and chose not to depose him. (See Exhibits 2 and 3 attached to the Declaration of Vladimir F.
15 Kozina) Plaintiffs cannot now come into court and claim that \$72,287.08 in attorneys' fees was
16 incurred in order to prove ILLO made this statement. The fees outlined in the declarations of
17 Anthony Boskovich and George MacKoul were not reasonably incurred by Plaintiffs in proving
18 that ILLO made the statement "all your mother wants to do is have sex with me" to AMBER
19 LOMAS. A majority, if not all of these fees, would have been incurred regardless of ILLO's
20 failure to admit making the statement. As such, they are not recoverable under Code of Civil
21 Procedure Section 2033(o).

22
23 **II. DEFENDANTS ARE ENTITLED TO SANCTIONS AGAINST PLAINTIFFS AND**
24 **THEIR ATTORNEYS**

25 Sanctions should be imposed under California Code of Civil Procedure Section 128.5
26 against Plaintiffs and their attorneys for brings this frivolous motion. A court may order a party,
27 the party's attorney, or both to pay any reasonable expenses, including attorney's fees, incurred
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1 by another party as a result of bad-faith action or tactics that are frivolous or solely intended to
2 cause unnecessary delay.

3 Plaintiffs' motion for attorney's fees is completely frivolous and without merit. As such,
4 Sanctions in the amount of \$2,160.00 (Two-Thousand One Hundred and Sixty Dollars) should be
5 imposed against Plaintiffs and their attorneys in order to compensate Defendants for amounts
6 expended in opposing this motion.

7
8 **CONCLUSION**

9 Plaintiffs are not entitled to recover any amount in attorneys' fees under Code of Civil
10 Procedure Section 2033(o) because the admission sought was of no substantial importance and
11 ILLO had reasonable grounds to believe he would prevail on the matter. At the time ILLO
12 prepared his response to the request for admission at issue, it was his contention that he did not
13 make the statement. Throughout the litigation process, up to and including the time of trial, this
14 remained his contention. ILLO contends he did not make the statement and despite a jury finding
15 to the contrary, he was reasonable in denying making such statement. In addition, Plaintiffs are
16 seeking to recover fees that are completely unreasonable and unrelated to proving the truth of the
17 matter of the admission sought. Finally, Sanctions in the amount of \$2,160.00 (Two-Thousand
18 One Hundred and Sixty Dollars) should be imposed against Plaintiffs and their attorneys in order
19 to compensate Defendants for amounts expended in opposing this motion.

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22 Dated: June 17, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

23
24 By: 
VLADIMIR F. KOZINA

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN}

I am a citizen of the United States. My business address is 2453 Grand Canal Boulevard, Second Floor, Stockton, California 95207. I am employed in the County of San Joaquin. I am over the age of 18 years and not a party to the within cause. On the date set forth below, I served the document(s) described as follows on the following person(s) in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

DOCUMENT(S) SERVED: DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR ATTORNEYS FEES

NAME(S) AND ADDRESS(ES) OF PERSON(S) SERVED:

9 GEORGE J. MACKOUL, ESQ. Via Federal Express
10 SABBAAH AND MACKOUL
11 49 LOCUST STREET
12 FALMOUTH, MASS 02540

12 ANTHONY BOSKOVICH, ESQ. Via California Overnight
13 28 NORTH FIRST ST., 6TH FLOOR
14 SAN JOSE, CA 95113-1210

14 PAUL N. BALESTRACCI, ESQ. Via California Overnight
15 NEUMILLER & BEARDSLEE
16 P.O. BOX 20
17 STOCKTON, CA 95201-3020

17 ~~[cc]~~ BY EXPRESS MAIL; Overnight Delivery. I caused a true copy thereof to be delivered by depositing for
18 collection on this same date, a sealed envelope addressed to the person(s) at the address(es) set forth above, into a
depository box of CALIFORNIA OVERNIGHT SERVICE at Stockton, California.

19 BY FACSIMILE Facsimile to the Facsimile telephone number(s) and at the time(s) indicated above, on the date of
20 execution of this document, as set forth below.

21 BY MAIL. I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at
22 Stockton, CA. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with
the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same
23 day in the ordinary course of business. I sealed said envelope(s) and placed it/them for collection and mailing on the date of
execution of this document, as set forth below, following ordinary business practices to the persons above where indicated.

24 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Served and executed on June 17, 2005, at Stockton, California.

25 
26 SHERI SIGMAN
27
28

1 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**
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2 2453 Grand Canal Boulevard, Second Floor
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10 STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC BISHOP OF STOCKTON,
a Corporation Sole
11

12 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**
13

14 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE No. CV018440**
15 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,) DECLARATION OF VLADIMIR F. KOZINA IN
16 **Plaintiffs,) SUPPORT OF OPPOSITION TO MOTION FOR**
) ATTORNEYS' FEES
17 **)**
18 **vs.)**
FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)
19 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,) DATE: JUNE 30, 2005**
BISHOP STEVEN BLAIRE AND THE DIOCESE) TIME: 9:00 A.M.
20 **OF STOCKTON, ET AL.,) DEPARTMENT: 41**
) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
21 **Defendants.)**
22 **)**

23 I, VLADIMIR F. KOZINA, declare as follows:
24

25 1. I am attorney licensed to practice law in the State of California, and am a partner with the
26 law firm of Mayall, Hurley, Knutsen, Smith & Green, attorneys of record for defendants FATHER
27 JOSEPH ILLO, MONSIGNOR RICHARD J. RYAN, BISHOP STEPHEN E. BLAIRE, FR. FRANCIS JOSEPH
28 Declaration Of Vladimir F. Kozina In Support Of Opposition To Motion For Attorneys' Fees

FILED
SUPERIOR COURT - STOCKTON
05 JUN 17 PM 3:35
Minnie Johnson
BY _____ CLERK

1 AKA FR. FRANCIS ARAKAL, AND THE ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation

2 Sole. I make this declaration based on personal knowledge and, if called to testify, could and
3 would testify consistently herewith.

4 2. Attached hereto as Exhibit 1 is a true and correct copy of the jury verdict form returned in
5 this matter.

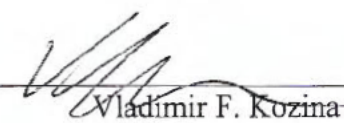
6 3. Attached hereto as Exhibit 2 is a true and correct copy of correspondence sent by myself to
7 counsel for Plaintiffs, Anthony Boskovich, on January 14, 2005, confirming an agreement
8 between the parties to allow discovery to remain open after the date set for discovery cut-off by
9 the Code of Civil Procedure in order to allow the depositions of Kathleen Machado, Bishop
10 Stephen Blaire, and Father Joseph Illo to be taken.

11 4. Attached hereto as Exhibit 3 is a true and correct copy of correspondence setting forth the
12 depositions that remained to be taken sent by my assistant Sheri Sigman, at my direction, to all
13 counsel on January 20, 2005. At the time this letter was sent out it was my understanding
14 Plaintiffs counsel intended to take the deposition of Father Joseph Illo.

15 5. I will charge my client a minimum of \$2,160.00 (Two-Thousand One Hundred and Sixty
16 Dollars) in attorneys fees which represents a minimum of 16 (sixteen) hours of time spent
17 researching and drafting an Opposition to Plaintiffs' Motion For Attorney's Fees, and preparing
18 for and attending oral argument.

19
20
21 I declare under penalty of perjury under the laws of the State of California that the
22 foregoing is true and correct.

23 Executed on June 16, 2005 at Stockton, California.

24
25 By  _____
26 Vladimir F. Kozina

Ⓢ

EXHIBIT 1

Filed APR 4 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNT OF SAN JOAQUIN

Kathleen Machado, et al
Plaintiff(s)

**NOTICE OF ENTRY OF
JUDGMENT**

vs

Fr. Joseph Ilo, et al
Defendant(s)

Case No. CV018440

You are notified that a judgment in this cause was entered on April 4, 2005

By Charlene Gray
Deputy Clerk

ATTORNEYS OF RECORD

George J. MacKoul
SABBAH AND MacKOUL
49 Locust Street
Falmouth, MA 02540

Tony Boskovich
LAW OFFICES OF A. BOSKOVICH
28 N. First Street, Suite 600
San Jose, CA 95113

Vladimir Kozina
MAYALL, HURLEY, KNUTSEN, et al
2453 Grand Canal Blvd., 2nd Floor
Stockton, CA 95207-8253

Michael D. Coughlan
ATTORNEY AT LAW
3031 W. March Lane, Suite 210 West
Stockton, CA 95219

[] Addition addresses attached.

I am a Deputy Clerk of the above entitled Court and not a party to the above entitled action. I served the above NOTICE OF ENTRY OF JUDGMENT by depositing a true copy thereof in the United States mail in Stockton, CA on April 4, 2005 enclosed in a sealed envelope with the postage thereon fully prepaid, addressed to each attorney of record at his respective Post Office address as set forth in this notice.

Charlene Gray
Deputy Clerk

NOTICE OF ENTRY

Filed APR 4 2005

ROSA JUNQUEIRO, CLERK

By

Charlene Gray

DEPUTY

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

Kathleen Machado, et al
Plaintiffs

Case #CV018440

vs.

**JUDGMENT ON SPECIAL
VERDICT IN OPEN COURT**

Fr. Joseph Illo, et al
Defendants

This action came on regularly for Trial. The parties appeared by their attorneys: George MacKoul & Tony Boskovich, Attorneys at Law, on behalf of the Plaintiff Kathleen Machado as an individual and as Guardian ad Litem for Rachel Lomas (hereafter referred to as "Rachel Lomas") and Amber Lomas (hereafter referred to as "Amber Lomas"); Vladimir Kozina, Attorney at Law, on behalf of Defendants Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton, a corporation sole; Michael Coughlan, Attorney at Law, on behalf of Defendant Fr. Francis Arakal.

A jury of 12 persons was regularly empaneled and sworn to try said action. Witnesses on the part of the Plaintiffs and Defendants were sworn and examined. The jury heard the evidence and the arguments of counsel. The jurors were given instructions at which time they retired to consider their special verdict. Subsequently the jury returned to the courtroom and rendered the following special verdict:

[X] see copy of the verdict attached.

Based on this verdict, the Court renders Judgment as follows:

Judgment for Plaintiff Amber Lomas against Defendants Fr. Joseph Illo for economic damages in the sum of \$12,000.00 with interest at the rate of 7% per annum from September 11, 2001 in the sum of \$2,734.70 for a total sum of \$14,734.70 and Fr. Francis Arakal for economic damages in the amount of \$8,000.00 with interest at the rate of 7% per annum from September 11, 2001 in the sum of \$1,783.50 for a total sum of \$9,783.50;

that Defendants Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton, a corporation sole have judgment that Plaintiff Kathleen Machado, Rachel Lomas and Amber Lomas take nothing;

that Defendants Fr. Joseph Illo and Fr. Francis Arakal have judgment that Kathleen Machado and Rachel Lomas take nothing;

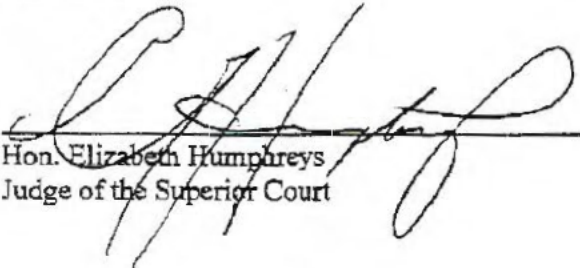
that Plaintiff Amber Lomas recover costs from Defendants Fr. Joseph Illo and Fr. Francis Arakal in the amount of _____;

that Defendants Fr. Richard Ryan, Bishop Steven Blair and the Roman Catholic Bishop of Stockton, a corporation sole, recover costs from Plaintiffs Kathleen Machado, Rachel Lomas and Amber Lomas in the amount of _____;

that Defendants Fr. Joseph Illo and Fr. Francis Arakal recover costs from Plaintiffs Kathleen Machado and Rachel Lomas in the amount of _____.

Costs to be determined by law and entered on the Judgment.

Date: April 4, 2005



Hon. Elizabeth Humphreys
Judge of the Superior Court

SPECIAL VERDICT
A. SEXUAL BATTERY: RACHEL LOMAS

Filed MAR 25 2005
ROSA JUNQUEIRO, CLERK
Charlene Gray
DEPUTY

1. Did Defendant Fr. Francis Arakal do an act with the intent to cause a harmful or offensive contact with an intimate part of Rachel Lomas?

____ YES X NO

If your answer is YES, go to question 2. If your answer is NO, go to Part B.

2. If you find that Defendant Fr. Francis Arakal did an act with the intent to cause a harmful or offensive contact with an intimate part of Rachel Lomas, did it result in a sexually offensive contact either directly or indirectly?

____ YES ____ NO

If your answer is YES, go to question 3. If your answer is NO, go to Part B.

3. Did Rachel Lomas consent to the contact?

____ YES ____ NO

If your answer is NO, go to question 4. If your answer is YES, go to Part B.

4. Did the harmful or offensive contact cause Rachel Lomas to suffer injury, damage, loss, or harm?

____ YES ____ NO

If your answer is YES, go to question 5. If your answer is NO, go to Part B.

5. Did any of the following ratify the conduct of Fr. Francis Arakal?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

PUNITIVE DAMAGES

6. Has Rachel Lomas proved by clear and convincing evidence that Fr. Francis Arakal acted with malice, oppression, or fraud?

_____ YES _____ NO

GO TO PART B

B. BATTERY - RACHEL LOMAS

1. Did Fr. Francis Arakal touch Rachel Lomas with the intent to harm or offend her?

_____ YES NO

If your answer to question 1 is YES, then answer question 2. If you answered NO, go to Part C.

2. Did Rachel Lomas consent to be touched?

_____ YES _____ NO

If your answer to question 2 is NO, then answer question 3. If you answered YES, go to Part C.

3. Was Rachel Lomas harmed or offended by Fr. Francis Arakal's conduct?

_____ YES _____ NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part C.

4. Would a reasonable person in Rachel Lomas' situation have been offended by the touching?

_____ YES _____ NO

If your answer to question 4 is YES, then answer question 5. If you answered NO, go to Part C.

5. Did any of the following ratify the conduct of Fr. Francis Arakal?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6. Was the conduct of Fr. Francis Arakal undertaken as the agent of:
Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here, go to Part C.

8. Was Fr. Francis Arakal acting within the scope of his agency when he undertook the conduct toward Rachel Lomas?

_____ YES _____ NO

PUNITIVE DAMAGES

7. Has Rachel Lomas proved by clear and convincing evidence that Fr. Francis Arakal acted with malice, oppression, or fraud?

_____ YES _____ NO

Go to Part C.

C. BATTERY - AMBER LOMAS

1. Did Fr. Francis Arakal touch Amber Lomas with the intent to harm or offend her?

_____ YES X NO

If your answer to question 1 is YES, then answer question 2. If you answered NO, go to Part D.

2. Did Amber Lomas consent to be touched?

_____ YES _____ NO

If your answer to question 2 is NO, then answer question 3. If you answered YES, go to Part D.

3. Was Amber Lomas harmed or offended by Fr. Francis Arakal's conduct?

_____ YES _____ NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part D.

4. Would a reasonable person in Amber Lomas' situation have been offended by the touching?

_____ YES _____ NO

If your answer to question 4 is YES, then answer question 5. If you answered NO, go to Part D.

5. Did any of the following ratify the conduct of Fr. Francis Arakal?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6. Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here, go to Part D.

8. Was Fr. Francis Arakal acting within the scope of his agency when he undertook the conduct toward Amber Lomas?

_____ YES _____ NO

Go to Part D.

D. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - RACHEL LOMAS

1. With respect to Rachel Lomas, was Fr. Francis Arakal or Fr. Joseph Illo's conduct outrageous?

Fr. Francis Arakal? _____ YES ~~_____ NO~~

Fr. Joseph Illo? _____ YES ~~_____ NO~~

If your answer to question 1 is YES to either defendant, then answer question 2 for that defendant. If you answered NO for both defendants, stop here, go to Part E.

2(a). Did Fr. Francis Arakal or Fr. Joseph Illo intend to cause Rachel Lomas emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES _____ NO

2(b) Did Fr. Francis Arakal or Fr. Joseph Illo act with reckless disregard of the probability that Rachel Lomas would suffer emotional distress, knowing that Rachel Lomas was present when the conduct occurred?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES _____ NO

If your answer to question 2(a) or 2(b) is YES for either defendant, then answer question 3 for that defendant. If you answered NO to each question in 2(a) and 2(b), stop here, and go to Part E.

3. Did Rachel Lomas suffer severe emotional distress?

_____ YES _____ NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part E.

4. Was Fr. Francis Arakal or Fr. Joseph Illo's conduct a substantial factor in causing Rachel Lomas's severe emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES _____ NO

If your answer to question 4 is YES for either defendant, then answer question 5 for the defendant for whom you answered YES. If you answered NO for both defendants, stop here and go to Part E.

5. Did any of the following ratify the conduct of Fr. Francis Arakal /Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

6(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 6 (a) or 6 (b) is YES, then answer question 7 with respect to such defendant. If you answered NO, stop here, go to Part E.

7. As to any defendant for whom you answered YES as to question 6, was that defendant acting within the scope of his agency when he undertook the conduct toward Rachel Lomas?

Fr. Francis Arakal _____ YES _____ NO

Fr. Joseph Illo _____ YES _____ NO

PUNITIVE DAMAGES

8. Has Rachel Lomas proved by clear and convincing evidence that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, or Bishop Steven Blaire acted with malice, oppression, or fraud?

As to Fr. Joseph Illo:

_____ YES _____ NO

As to Fr. Francis Arakal:

_____ YES _____ NO

As to Msgr. Richard Ryan:

_____ YES _____ NO

As to Bishop Steven Blaire:

_____ YES _____ NO

Go to Part E.

E. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - AMBER LOMAS

1. With respect to Amber Lomas, was Fr. Francis Arakal or Fr. Joseph Illo's conduct outrageous?

Fr. Francis Arakal? _____ YES X NO

Fr. Joseph Illo? X YES _____ NO

If your answer to question 1 is YES to either defendant, then answer question 2 for that defendant. If you answered NO for both defendants, stop here, go to Part F.

2(a). Did Fr. Francis Arakal or Fr. Joseph Illo intend to cause Amber Lomas emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES X NO

2(b) Did Fr. Francis Arakal or Fr. Joseph Illo act with reckless disregard of the probability that Amber Lomas would suffer emotional distress, knowing that Amber Lomas was present when the conduct occurred?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? X YES _____ NO

If your answer to question 2(a) or 2(b) is YES for either defendant, then answer question 3 for that defendant. If you answered NO to each question in 2(a) and 2(b), stop here, and go to Part F.

3. Did Amber Lomas suffer severe emotional distress?

_____ YES X NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part F.

4. Was Fr. Francis Arakal or Fr. Joseph Illo's conduct a substantial factor in causing Amber Lomas's severe emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES _____ NO

If your answer to question 4 is YES for either defendant, then answer question 5 for the defendant for whom you answered YES. If you answered NO for both defendants, stop here and go to Part F.

5. Did any of the following ratify the conduct of Fr. Francis Arakal /Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

6(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 6 (a) or 6 (b) is YES, then answer question 7 with respect to such defendant. If you answered NO, stop here, go to Part F.

7. As to any defendant for whom you answered YES as to question 6, was that defendant acting within the scope of his agency when he undertook the conduct toward Amber Lomas?

Fr. Francis Arakal _____ YES _____ NO

Fr. Joseph Illo _____ YES _____ NO

PUNITIVE DAMAGES

8. Has Amber Lomas proved by clear and convincing evidence that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, or Bishop Steven Blaire acted with malice, oppression, or fraud?

As to Fr. Joseph Illo:

_____ YES _____ NO

As to Fr. Francis Arakal:

_____ YES _____ NO

As to Msgr. Richard Ryan:

_____ YES _____ NO

As to Bishop Steven Blaire:

_____ YES _____ NO

Go to Part F.

F. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - KATHLEEN MACHADO

1. With respect to Kathleen Machado, was Fr. Francis Arakal or Fr. Joseph Illo's conduct outrageous?

Fr. Francis Arakal? _____ YES X NO

Fr. Joseph Illo? _____ YES X NO

If your answer to question 1 is YES to either defendant, then answer question 2 for that defendant. If you answered NO for both defendants, stop here, go to Part G.

2(a). Did Fr. Francis Arakal or Fr. Joseph Illo intend to cause Kathleen Machado emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES _____ NO

2(b) Did Fr. Francis Arakal or Fr. Joseph Ilo act with reckless disregard of the probability that Kathleen Machado would suffer emotional distress, knowing that Kathleen Machado was present when the conduct occurred?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Ilo? _____ YES _____ NO

If your answer to question 2(a) or 2(b) is YES for either defendant, then answer question 3 for that defendant. If you answered NO to each question in 2(a) and 2(b), stop here, and go to Part F.

3. Did Kathleen Machado suffer severe emotional distress?

_____ YES _____ NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part F.

4. Was Fr. Francis Arakal or Fr. Joseph Ilo's conduct a substantial factor in causing Kathleen Machado's severe emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Ilo? _____ YES _____ NO

If your answer to question 4 is YES for either defendant, then answer question 5 for the defendant for whom you answered YES. If you answered NO for both defendants, stop here and go to Part G.

5. Did any of the following ratify the conduct of Fr. Francis Arakal /Fr. Joseph Ilo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

6(b). Was the conduct of Fr. Joseph Ilo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 6 (a) or 6 (b) is YES, then answer question 7 question 7 with respect to such defendant. If you answered NO, stop here, go to Part G.

7. As to any defendant for whom you answered YES as to question 6, was that defendant acting within the scope of his agency when he undertook the conduct toward Kathleen Machado?

Fr. Francis Arakal _____ YES _____ NO

Fr. Joseph Ilo _____ YES _____ NO

PUNITIVE DAMAGES

8. Has Kathleen Machado proved by clear and convincing evidence that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, or Bishop Steven Blaire acted with malice, oppression, or fraud?

As to Fr. Joseph Illo:

_____ YES _____ NO

As to Fr. Francis Arakal:

_____ YES _____ NO

As to Msgr. Richard Ryan:

_____ YES _____ NO

As to Bishop Steven Blaire:

_____ YES _____ NO

Go to Part G.

G. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS - RACHEL LOMAS

With respect to Rachel Lomas:

1. Was Fr. Joseph Illo negligent?

_____ YES X NO

Was Fr. Francis Arakal negligent?

_____ YES X NO

Was Msgr Richard Ryan negligent?

_____ YES X NO

Was Bishop Steven Blaire negligent?

_____ YES X NO

If you answered YES in any part of question 1, then answer question 2. If you answered NO to all parts of question 1, stop here, go to Part H.

2. For each defendant that received a "YES" answer in question 1, answer the following:

Was Fr. Joseph Illo's negligence a substantial factor in causing harm to Rachel Lomas?

_____ YES _____ NO

Was Fr. Francis Arakal's negligence a substantial factor in causing harm to Rachel Lomas?

_____ YES _____ NO

Was Msgr Richard Ryan's negligence a substantial factor in causing harm to Rachel Lomas?

_____ YES _____ NO

Was Bishop Steven Blaire's negligence a substantial factor in causing harm to Rachel Lomas?

_____ YES _____ NO

If you answered YES in any part of question 2 with respect to one or more of the defendants, then answer question 3 as to that/those defendants. If you answered NO regarding all persons in question 2, then insert the number zero next to their names in question 3 and answer question 3.

3. What percentage of responsibility for Rachel's harm do you assign to the following? Insert a percentage for only those who received "YES" answers in question 2:

Fr. Joseph Illo: _____%

Fr. Francis Arakal: _____%

Monsignor Richard Ryan: _____%

Bishop Steven Blaire: _____%

TOTAL 100 %

4. Did any of the following ratify the conduct of Fr. Francis Arakal or Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 5.

5(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

5(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 5(a) or 5(b) is YES, then answer question 6. If you answered NO to both, stop here, go to Part H.

6. Was either Fr. Francis Arakal or Fr. Joseph Illo acting within the scope of his agency when he undertook the conduct toward Rachel Lomas?

Fr. Francis Arakal YES NO

Fr. Joseph Illo YES NO

Go to H

H. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS - AMBER LOMAS

With respect to Amber Lomas:

1. Was Fr. Joseph Illo negligent?

YES NO

Was Fr. Francis Arakal negligent?

YES NO

Was Msgr Richard Ryan negligent?

YES NO

Was Bishop Steven Blaire negligent?

YES NO

If you answered YES in any part of question 1, then answer question 2. If you answered NO to all parts of question 1, stop here, go to Part I.

2. For each defendant that received a "YES" answer in question 1, answer the following:

Was Fr. Joseph Illo's negligence a substantial factor in causing harm to Amber Lomas?

YES NO

Was Fr. Francis Arakal's negligence a substantial factor in causing harm to Amber Lomas?

X YES _____ NO

Was Msgr Richard Ryan's negligence a substantial factor in causing harm to Amber Lomas?

_____ YES X NO

Was Bishop Steven Blaire's negligence a substantial factor in causing harm to Amber Lomas?

_____ YES X NO

If you answered YES in any part of question 2 with respect to one or more of the defendants, then answer question 3 as to that/those defendants. If you answered NO regarding all persons in question 2, then insert the number zero next to their names in question 3 and answer question 3.

3. What percentage of responsibility for Amber Lomas's harm do you assign to the following? Insert a percentage for only those who received "YES" answers in question 2:

Fr. Joseph Illo:	<u>60</u> %
Fr. Francis Arakal:	<u>40</u> %
Monsignor Richard Ryan:	_____ %
Bishop Steven Blaire:	_____ %
TOTAL	100 %

4. Did any of the following ratify the conduct of Fr. Francis Arakal or Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	<u>X</u>
Monsignor Richard Ryan	_____	<u>X</u>
Diocese of Stockton	_____	<u>X</u>

Go to Question 5.

5 (a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

X YES _____ NO

Bishop Stephen Blaire

X YES _____ NO

Monsignor Richard Ryan

X YES _____ NO

5(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

X YES _____ NO

Bishop Stephen Blaire

X YES _____ NO

Monsignor Richard Ryan

X YES _____ NO

If your answer to question either 5 (a) or 5(b) is YES, then answer question 6. If you answered NO to both, stop here, go to Part I.

6. Was either Fr. Francis Arakal or Fr. Joseph Illo acting within the scope of his agency when he undertook the conduct toward Amber Lomas?

Fr. Francis Arakal X YES _____ NO

Fr. Joseph Illo X YES _____ NO

Go to I

I. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS - KATHLEEN MACHADO

With respect to Kathleen Machado:

1. Was Fr. Joseph Illo negligent?

YES NO

Was Fr. Francis Arakal negligent?

YES NO

Was Msgr Richard Ryan negligent?

YES NO

Was Bishop Steven Blaire negligent?

YES NO

If you answered YES in any part of question 1, then answer question 2. If you answered NO to all parts of question 1, stop here, go to Part J.

2. For each defendant that received a "YES" answer in question 1, answer the following:

Was Fr. Joseph Illo's negligence a substantial factor in causing harm to Kathleen Machado?

YES NO

Was Fr. Francis Arakal's negligence a substantial factor in causing harm to Kathleen Machado?

YES NO

Was Msgr Richard Ryan's negligence a substantial factor in causing harm to Kathleen Machado?

YES NO

Was Bishop Steven Blaire's negligence a substantial factor in causing harm to Kathleen Machado?

_____ YES _____ NO

If you answered YES in any part of question 2 with respect to one or more of the defendants, then answer question 3 as to that/those defendants. If you answered NO regarding all persons in question 2, then insert the number zero next to their names in question 3 and answer question 3.

3. What percentage of responsibility for Kathleen Machado harm do you assign to the following? Insert a percentage for only those who received "YES" answers in question 2:

Fr. Joseph Illo:	_____ %
Fr. Francis Arakal:	_____ %
Monsignor Richard Ryan:	_____ %
Bishop Steven Blaire:	_____ %
TOTAL	100 %

4. Did any of the following ratify the conduct of Fr. Francis Arakal or Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 5.

5(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

5(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 5(a) or 5(b) is YES, then answer question question 6. If you answered NO to both, stop here, go to Part J.

6. Was Fr. Francis Arakal or Fr. Joseph Illo acting within the scope of his agency when he undertook the conduct toward Kathleen Machado?

Fr. Francis Arakal _____ YES _____ NO

Fr. Joseph Illo _____ YES _____ NO

Go to J

J. DEFAMATION PER SE - KATHLEEN MACHADO.

1. Did Fr. Joseph Illo make one or more of the following statement(s) to a person or persons other than Kathleen Machado?

"All your mother wants is to have sex with me."

YES _____ NO

"Kathleen Machado is stalking me."

_____ YES NO

If your answer to question 1 is YES, then answer question 2 for the defendant for whom you gave a YES answer. If you answered NO, stop here. go to Part K.

2. Did the people to whom the statements were made reasonably understand that the statement(s) were about Kathleen Machado?

"All your mother wants is to have sex with me."

YES NO

"Kathleen Machado is stalking me"..

YES NO

If your answer to question 2 is YES as to any statement, then answer question 3. If you answered NO to all statements, stop here, and go to Part K.

3. Did these people reasonably understand the statement(s) to mean that Kathleen Machado was an unchaste woman or had committed a crime?

Unchaste woman?

YES NO

Committed a crime?

YES NO

If your answer to question 3 is YES in any respect, then answer question 4 for the statement(s) for which you answered YES. If you answered NO to all, stop here and go to Part K.

4. Did Fr. Joseph Illo fail to use reasonable care to determine the truth or falsity of the statement(s)?

"All your mother wants is to have sex with me."

YES NO

"Kathleen Machado is stalking me"..

YES NO

If your answer to any part of question 4 is YES, then answer question 5. If you answered NO, stop here, and go to Part K

K

ACTUAL DAMAGES

5. What are Kathleen Machado's actual damages?

a. Past Noneconomic loss including shame, mortification, or hurt feelings, and harm to Kathleen Machado's reputation.

As to Fr. Joseph Illo:

\$ _____

B. Future Noneconomic loss including shame, mortification, or hurt feelings, and harm to Kathleen Machado's reputation

As to Fr. Joseph Illo:

\$ _____

TOTAL \$ _____

If Kathleen Machado has Not proved any actual damages, then answer question 6.

If Kathleen Machado has proved any actual damages, skip question 6 and answer question 7.

ASSUMED DAMAGES TO REPUTATION

6. What are the damages you award Kathleen Machado for the assumed harm to her reputation? You must award at least a nominal sum.

As to Fr. Joseph Illo:

\$ _____

As to Fr. Joseph Illo:

\$ _____

Regardless of your answer to question 6, answer question 7.

PUNITIVE DAMAGES

7. Has Kathleen Machado proved by clear and convincing evidence that Fr. Joseph Illo acted with malice, oppression, or fraud?

As to Fr. Joseph Illo:

_____ YES _____ NO

K. DAMAGES

If you found in favor of Rachel Lomas, Amber Lomas, or Kathleen Machado on any cause of action, please answer the following. Otherwise, have the foreperson sign and date this form.

1. What are Rachel Lomas's total damages? Do not reduce the damages based on the fault, if any, of others.

- a. Past economic loss, including medical expenses]: \$ _____
 - b. Future economic loss, including medical expenses: \$ _____
 - c. Past Noneconomic loss, including physical pain, mental suffering: \$ _____
 - d. Future Noneconomic loss, including physical pain, mental suffering: \$ _____
- TOTAL \$ 0

2. What are Amber Lomas's total damages? Do not reduce the damages based on the fault, if any, of others.

- a. Past economic loss, including medical expenses]: \$ 0
 - b. Future economic loss, including medical expenses: \$ 20,000
 - c. Past noneconomic loss, including physical pain, mental suffering: \$ 0
 - d. Future noneconomic loss, including physical pain, mental suffering: \$ 0
- TOTAL \$ 20,000

3. What are Kathleen Machado's total damages, not including the damages awarded for defamation, if any? Do not reduce the damages based on the fault, if any, of others.

a. Past noneconomic loss, including physical pain, mental suffering: \$ _____

b. Future noneconomic loss, including physical pain, mental suffering: \$ _____

TOTAL (excluding defamation) \$ _____

+ DEFAMATION DAMAGES \$ _____

TOTAL DAMAGES FOR KATHLEEN MACHADO \$ 0

Dated: 03/25/05



Foreperson

LAW OFFICES

**MAYALL, HURLEY,
KNUTSEN, SMITH & GREEN**

A PROFESSIONAL CORPORATION
2450 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95107-8253

FAX 209 475-4418
TELEPHONE 209 477-3833

WILLIAM W. HALE
MARK STEPHEN ADAMS
J. ANTHONY ASSOTT
VLADIMIR F. KOJINA
KRISTEN M. HEGGE
STEVEN A. MALCOLM
MARK E. BERRY
WILLIAM J. GORHAM III
JEFFREY B. SETNEBB
JOSEPH A. SALAZAR, JR.
QUINDRETH MACEDO
JAY M. HIBLOP
DAVID D. CHENG
ROBERT C. RODRIGUEZ
GHAD J. WOODS
REINA MINOYA
AMANDA BERLIN
CHRISTOPHER NIELSEN
MICHAEL PHILLIPS

Admitted in Nevada

January 14, 2005

Via Fax: (408)286-5170

Anthony Boskovich, Esq.
Attorney at Law
28 North First Street, 6th Floor
San Jose, California 95113-1210

Re: *Machado v. Illo, et al.*

Dear Mr. Boskovich,

This will confirm that we have agreed, for the convenience of witnesses and counsel, to permit the completion of depositions of lay witnesses and parties, including Kathleen Machado, Bishop Stephen Blaire and Fr. Joseph Illo after the date normally set for discovery cut-off by the Code of Civil Procedure.

It is understood that this applies to those non-expert witnesses whose depositions notices have been served prior to the cut-off date, either for completion of a deposition or for initial deposition in this matter.

The scheduling of these depositions will be done to accommodate the schedules of the witnesses and counsel.

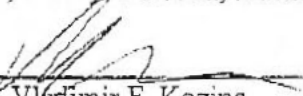
As a consequence of this understanding, the currently scheduled depositions of Fr. Illo, Monsignor Ryan and Bishop Blaire set for Friday, January 21, 2005 will be continued pursuant to the above agreement.

I would ask that the respective offices arrange the new deposition dates and confirm them by writing as soon as is reasonably convenient.

If this does not comport with your understanding, please let me know immediately.

Very truly yours,
Mayall, Hurley, Knutsen, Smith & Green

By



Vladimir F. Kozina

Copy

Paul Balestracci, Esq.
Michael Coughlan, Esq.
George McKoul, Esq.

MAYALL, HURLEY, KNUTSEN,

SMITH & GREEN

A PROFESSIONAL CORPORATION

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253

Telephone: 209 477-3833
Facsimile 209 473-4818
Internet: www.mayallaw.com

FACSIMILE
TRANSMISSION

To: Anthony Boskovich, Esq. From: V. Kozina, Esq.
Subject: Machado v Diocese of Stockton
Recipient Fax Number: [408] 286 • 5170
Date: 1-14-05 Page 1 of 3 Pages

NOTICE: THIS COMMUNICATION IS INTENDED FOR ANTHONY BOSKOVICH, PAUL N. BALESTRACCI, MICHAEL D. COUGHLAN AND GEORGE J. MACKOUL ONLY. IF YOU RECEIVE THIS FACSIMILE IN ERROR, PLEASE CONTACT THE SENDER FOR INSTRUCTIONS REGARDING ITS RETURN.

Copies
Paul N. Balestracci, Esq. - Via Fax: 948-4910
Michael D. Coughlan, Esq. - Via Fax: (209)957-5338
George J. MacKoul, Esq. - Via Fax: (508)495-4115

LAW OFFICES
MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

A PROFESSIONAL CORPORATION
 2453 GRAND CANAL BOULEVARD
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STOCKTON, CALIFORNIA 95207-8253

LEN H. HONEY
 1986-1972
 EDWIN MAYALL
 1997-1980

JOHN J. HURLEY
 CLARENCE D. KNUTSEN
 ALAN B. SMITH
 DENNIS J. GREEN
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 MARK E. BERRY
 WILLIAM J. BORNHAM III
 JOSEPH A. SALAZAR, JR.
 JEFFREY B. BETNASS
 QUEENDRITH L. MACPHER
 JAY M. HIRSH
 DAVID CHENG
 ROBERT RODRIGUEZ
 CHAD J. WOOD
 REINA G. HINOYA
 AMANDA R. BERLIN
 CHRISTOPHER G. NIELSEN
 MICHAEL L. PHILLIPS

January 20, 2005

George J. MacKoul, Esq.
 Sabbah and Mackoul
 49 Locust Street
 Falmouth, Mass 02540

Via Fax: (508)495-4115

Anthony Boskovich, Esq.
 28 North First Street, 6th Floor
 San Jose, CA 95113-1210

Via Fax: (408)286-5170

Paul Balestracci, Esq.
 Neumiller & Beardslee
 P.O. Box 20
 Stockton, CA 95201

Via Fax: 948-4910

Michael D. Coughlan, Esq.
 3031 W. March Lane, Suite 210W
 Stockton, CA 95219

Via Fax: 957-5338

Re: *Machado v. Ilo, et al.*

Dear Counsel:

This morning I spoke to Mr. MacKoul regarding the rescheduling of depositions in this matter. It was agreed that all depositions that need to be taken will be rescheduled to the week beginning January 31, 2005. The exact details have not yet been worked out but they will involve rearranging the expert depositions already set for that week.

The purpose of this letter is to confirm that all counsel are agreeable to this arrangement and, assuming no one objects, to propose a list of deponents. The following is a list of depositions which I have compiled. I ask that each of you review the list, make any notations of accommodations that need to be made and forward it back to me.

January 20, 2005

Page 2

Deponent

Norman Schmidt
Dianne Stevens
Det. Don Bali
Owen Kummerle
Johnny Smith (pending outcome of motion for protective order)
Fr. Illo
Mary Mullins
Bishop Blaire
Monsignor Ryan

Experts

Fr. Doyle
Sonnee Weedn
Richard Sipe

If this list meets with all counsel's approval, I will continue to work out the exact schedule and would appreciate your comments or suggestions regarding same.

With regard to Bishop Blaire, we request that his deposition be scheduled for January 31, at 9:00 a.m. in one of the Stockton offices. This is to accommodate his schedule. This office offers to pay for the court reporter in exchange for agreement to this request.

I look forward to your responses to this letter.

Very truly yours,
Mayall, Hurley, Knutsen, Smith & Green

By *Sheri Sigman*
SHERI SIGMAN, Assistant to
VLADIMIR F. KOZINA

VFK/sas

Monday Sub

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CA State Bar No. 232978

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Telephone: (209)948-8200
PAUL N. BALESTRACCI
CA State Bar No. 083987

Attorneys for Defendants
Father Joseph Illo, Monsignor Richard J. Ryan, Bishop
Stephen E. Blaire, And The Roman Catholic Bishop Of Stockton,
a Corporation Sole

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

KATHLEEN MACHADO AS AN INDIVIDUAL)
AND AS GUARDIAN AD LITEM FOR RACHEL)
LOMAS AND AMBER LOMAS,)
Plaintiffs,)
vs.)
FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)
FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)
BISHOP STEVEN BLAIRE AND THE DIOCESE)
OF STOCKTON, ET AL.,)
Defendants.)

CASE No. CV018440

**Notice of Court Ruling
Code of Civil Procedure § 1019.5**

To Plaintiffs Kathleen Machado, as an individual, Kathleen Machado as Guardian Ad Litem for Rachel Lomas and Kathleen Machado as Guardian Ad Litem for Amber Lomas and their attorneys of record:

Code of Civil Procedure § 1019.5 Notice of Court Ruling on Costs

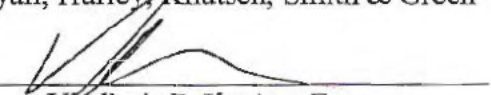
FILED
05 JUN 10 PM 1:43
ROSA JUNQUEIRO, CLERK
James Edwards
(DEPUTY)

1 Notice is hereby given that the Honorable Elizabeth Humphreys, Judge of the Superior Court of
2 California, for and in the County of San Joaquin, upon consideration of the Plaintiffs Motion to
3 Tax Costs of Defendants and Defendant's Motion to Tax Costs of Plaintiff Kathleen Machado as
4 Guardian Ad Litem for Amber Lomas, issued an order awarding costs to Amber Lomas in the
5 sum of \$9,348.10 as against Defendants and awarding costs in favor of Defendants Fr. Joseph
6 Illo, Monsignor Richard J. Ryan, Bishop Steven Blaire And The Diocese Of Stockton as against
7 defendants Kathleen Machado and Kathleen Machado as Guardian Ad Litem for Rachel Lomas
8 in the sum of \$23,999.54.

9
10 Dated: June 9, 2005

Mayall, Hurley, Knutsen, Smith & Green

11 By


Vladimir F. Kozina, Esq.
Attorneys for Defendants

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN}

I am a citizen of the United States. My business address is 2453 Grand Canal Boulevard, Second Floor, Stockton, California 95207. I am employed in the County of San Joaquin. I am over the age of 18 years and not a party to the within cause. On the date set forth below, I served the document(s) described as follows on the following person(s) in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

DOCUMENT(S) SERVED: NOTICE OF COURT RULING CODE OF CIVIL PROCEDURE §1019.5

NAME(S) AND ADDRESS(ES) OF PERSON(S) SERVED:

GEORGE J. MACKOUL, ESQ.
SABBAH AND MACKOUL
49 LOCUST STREET
FALMOUTH, MASS 02540

ANTHONY BOSKOVICH, ESQ.
28 NORTH FIRST ST., 6TH FLOOR
SAN JOSE, CA 95113-1210

PAUL N. BALESTRACCI, ESQ.
NEUMILLER & BEARDSLEE
P.O. BOX 20
STOCKTON, CA 95201-3020

_____*BY FACSIMILE* Facsimile to the Facsimile telephone number(s) and at the time(s) indicated above, on the date of execution of this document, as set forth below.

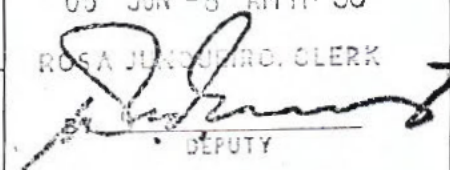
XX *BY MAIL*. . I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Stockton, CA. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope(s) and placed it/them for collection and mailing on the date of execution of this document, as set forth below, following ordinary business practices to the persons above where indicated.

_____*BY PERSONAL DELIVERY*. I caused such document to be delivered to the party in said action by delivering a true copy thereof to the law offices of the person listed above where indicated (By Personal Service).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Served and executed on June 9, 2005, at Stockton, California.


SHERI SIGMAN

Under Seal

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): VLADIMIR F. KOZINA (State Bar # 95422) MAYALL, HURLEY, KNUTSEN, SMITH & GREEN 2453 Grand Canal Boulevard Stockton, California 95207 ATTORNEY FOR (Name): Illo, Diocese, Roman Catholic Bishop; Mons. Ryan	TELEPHONE NO.: (209) 477-3833 FAX NO.: (209) 473-4818	FOR COURT USE ONLY FILED 05 JUN -8 AM 11:55 ROSA J. JACOBINO, CLERK  DEPUTY
NAME OF COURT: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN STREET ADDRESS: 222 E. Weber Avenue MAILING ADDRESS: CITY AND ZIP CODE: Stockton 95202 BRANCH NAME:		
CASE NAME:	Machado vs. Illo, et al.	
SUBSTITUTION OF ATTORNEY—CIVIL (Without Court Order)	CASE NUMBER: CV018440	

THE COURT AND ALL PARTIES ARE NOTIFIED THAT (name): **Father Francis Arakal** makes the following substitution:

1. Former legal representative Party represented self Attorney (name): **Michael Coughlan**
2. New legal representative Party is representing self* Attorney
- a. Name: **Vladimir F. Kozina** b. State Bar No. (if applicable): **95422**
- c. Address (number, street, city, ZIP, and law firm name, if applicable): **Mayall, Hurley, Knutsen, Smith & Green, 2453 Grand Canal Blvd., Stockton, CA 95207**
- d. Telephone No. (include area code): **(209) 477-3833**
3. The party making this substitution is a plaintiff defendant petitioner respondent other (specify):

***NOTICE TO PARTIES APPLYING TO REPRESENT THEMSELVES**

- Guardian
- Conservator
- Trustee
- Personal representative
- Probate fiduciary
- Corporation
- Guardian ad litem
- Unincorporated association

If you are applying as one of the parties on this list, you may NOT act as your own attorney in most cases. Use this form to substitute one attorney for another attorney. SEEK LEGAL ADVICE BEFORE APPLYING TO REPRESENT YOURSELF.

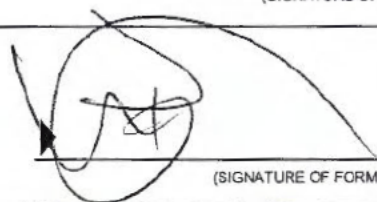
NOTICE TO PARTIES WITHOUT ATTORNEYS

A party representing himself or herself may wish to seek legal assistance. Failure to take timely and appropriate action in this case may result in serious legal consequences.

4. I consent to this substitution.
 Date: 06.06.2005 **Father Francis Arakal**
 (TYPE OR PRINT NAME)


 (SIGNATURE OF PARTY)

5. I consent to this substitution.
 Date: 6/6/05
Michael Coughlan
 (TYPE OR PRINT NAME)


 (SIGNATURE OF FORMER ATTORNEY)

6. I accept this substitution.
 Date: 6-6-05 **Vladimir F. Kozina**
 (TYPE OR PRINT NAME)


 (SIGNATURE OF NEW ATTORNEY)

(See reverse for proof of service by mail)

1
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PROOF OF SERVICE

4 *STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN*

5 I am a citizen of the United States. My business address is 2453 Grand Canal Boulevard, Second Floor, Stockton, California 95207. I am employed in the County of San Joaquin. I am over the age of 18 years and not a party to the within cause. On the date set forth below, I served the document(s) described as follows on the following person(s) in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

6 **DOCUMENT(S) SERVED:** SUBSTITUTION OF ATTORNEY-CIVIL

7 **NAME(S) AND ADDRESS(ES) OF PERSON(S) SERVED:**

8 GEORGE J. MACKOUL, ESQ.
9 SABBAAH AND MACKOUL
10 49 LOCUST STREET
11 FALMOUTH, MASS 02540

12 ANTHONY BOSKOVICH, ESQ.
13 28 NORTH FIRST ST., 6TH FLOOR
14 SAN JOSE, CA 95113-1210

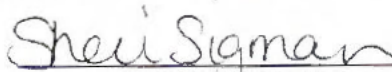
15 PAUL N. BALESTRACCI, ESQ.
16 NEUMILLER & BEARDSLEE
17 P.O. BOX 20
18 STOCKTON, CA 95201-3020

19 MICHAEL COUGHLAN, ESQ.
20 LAW OFFICES OF MICHAEL D. COUGHLAN
21 3031 W. MARCH LANE, #210 WEST
22 STOCKTON, CA 95219

23 _____ *BY FACSIMILE* Facsimile to the Facsimile telephone number(s) and at the time(s) indicated above, on the date of execution of this document, as set forth below.

24 xx *BY MAIL*. . I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Stockton, CA. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope(s) and placed it/them for collection and mailing on the date of execution of this document, as set forth below, following ordinary business practices to the persons above where indicated.

25 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
26 Served and executed on June 7, 2005, at Stockton, California.

27
28

SHERI SIGMAN

Filed 8 JUN 8 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

Plaintiffs: KATHLEEN MACHADO, et al

vs.

Defendants: FR. JOSEPH ILLO, et al

CASE NO. CV018440

Certificate of Service by Mail

I, the undersigned, declare that I am a Deputy Superior Court Clerk of the County of San Joaquin, State of California, and not a party to the action, and that on JUN 8 2005 I deposited in the United States Post Office at Stockton, California, true and correct copies of **Decision re: Plaintiffs' Motion ... ; Defendants' Motion to Tax Costs**, a copy of which is hereto attached and made a part hereof, one copy of which being addressed to each of the following named persons at the following names and addresses:

George J. MacKoul
SABBAH & MACKOUL
49 Locust Street
Falmouth, MA 02540

Vladimir F. Kozina
MAYALL, HURLEY, KNUTSEN, et al
2453 Grand Canal Boulevard, Second Floor
Stockton, CA 95207-8253

Anthony Boskovich
LAW OFFICES OF ANTHONY BOSKOVICH
28 North First Street, 6th Floor
San Jose, CA 95113-1210

Michael D. Coughlan
ATTORNEY AT LAW
3031 West March Lane, Suite 210 West
Stockton, CA 95219

I further declare that each of said copies so mailed and addressed was enclosed in a separate envelope, sealed, with the postage thereon fully paid.

I declare under penalty of perjury that the foregoing is true and correct.

Executed at Stockton on the above date

Charlene Gray
Charlene Gray
Deputy Superior Court Clerk

CERTIFICATE OF SERVICE BY MAIL

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Filed *RG* JUN 7 2005
ROSA JUNQUEIRO, CLERK
By *Charlene Gray*
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
STOCKTON BRANCH

Kathleen Machado as an individual
and as Guardian ad Litem for Rachel
Lomas and Amber Lomas

Case No. CV018440

Plaintiffs

vs

DECISION RE
PLAINTIFFS' MOTION
TO TAX COSTS;
DEFENDANTS'
MOTION
TO TAX COSTS

Fr. Joseph Illo, Fr. Francis Joseph
aka Fr. Francis Arakal, Fr. Richard
Ryan, Bishop Steven Blaire and The
Diocese of Stockton, et al

Defendants

The above-entitled matter came on for hearing May 26, 2005 before the Honorable Elizabeth Humphreys. Attorney Anthony Boskovich appeared in person and Attorney George MacKoul appeared by CourtCall on behalf of the Plaintiffs, Kathleen Machado, individually and as Guardian ad Litem for Rachel Lomas and Amber Lomas. Attorney Vladimir Kozina appeared on behalf of the Defendants, Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blair and the Diocese of Stockton and specially appeared on behalf of Defendant Fr. Francis Joseph aka Fr. Francis Arakal.

Having heard and considered the documentary evidence and arguments presented by counsel, the Court now makes a decision on the matter taken under submission.

1 Pursuant to Code of Civil Procedure section 473 the court has determined that
2 Defendants did not waive their right to costs when the Memorandum of Costs used only
3 Defendant Illo's name in the caption. Plaintiff Amber Lomas did not waive her right to costs
4 when the caption on Plaintiff's Memorandum of Costs named all Plaintiffs. Plaintiffs'
5 Memorandum of Costs is deemed filed as to Amber Lomas only and the Motion to Strike
6 will be considered as a Motion to Tax. This ruling was made with the concurrence of all
7 counsel at the hearing on this matter. See generally, *Douglas v. Willis*, 27 Cal. App. 4th 287,
8 290.

9
10 CCP §998 Offer

11 The Code of Civil Procedure section 998 ("section 998") written offer to compromise
12 made by all Defendants was

- 13 1. made in good faith. See *Elrod v. Oregon*, 195 Cal. App. 3d 692, 698; *Nelson*
14 *v. Anderson*, 72 Cal. App. 4th 111, 133-134 (1999);
- 15 2. properly served upon the Plaintiffs;
- 16 3. made pursuant to section 998; but
- 17 4. was conditional. The offer to compromise specifically states that one Plaintiff
18 could not accept the amount offered to her individually if the other Plaintiffs
19 did not accept their offers, therefore, the section 998 offer was conditional.
20 See *Menees v. Todd Andrews*, 122 Cal. App. 4th 1540, 1546 (2001); but see
21 *San Antonio v. Westinghouse*, 25 Cal. App. 4th 102, 112 (1994). In the
22 *Menees v. Andrews* case, the Appellate Court noted that in many critical
23 places the joint section 998 offer was written in the plural and conjunctive.
24 Defendants' section 998 offer in this case refers to "Plaintiffs" repeatedly and
25 specifically requires all three Plaintiffs (or Kathleen Machado individually
26 and as guardian ad litem) to provide a "dismissal with prejudice by Plaintiffs
27 ... against Defendants..." In *San Antonio, supra*, the offer set out all
28 obligations by each Plaintiff separately. *Id.* at 109 FN1. The section 998

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offer was conditional and its rejection by Plaintiffs (Kathleen individually and as guardian ad litem) cannot serve to shift the costs of experts to the Plaintiffs nor may Amber Lomas be a non-prevailing party simply because she rejected the offer and did not "beat" it.

Costs to Plaintiff Amber Lomas
(Kathleen Machado as Guardian as litem)

When a prevailing party has incurred costs jointly with one or more other parties who are not prevailing parties for purposes of an award of costs, any award of costs to the prevailing party must be apportioned between the parties. Cal. Civ. Pro. Code §§ 1032(a)(4), 1034.

In apportioning the costs between prevailing Plaintiff, Amber Lomas, and non-prevailing Plaintiffs, Kathleen Machado and Rachel Lomas, the court has considered

- 1) the extent to which the prevailing party needed to incur the costs to prevail;
- 2) whether a cost benefitted only or primarily the prevailing party or only or primarily a non-prevailing co-party;
- 3) the prevailing parties' relative stake;
- 4) the effort expended by the prevailing party as compared with the non-prevailing co-parties.

Based on these factors the court awards Amber Lomas costs as follows:

Filing and Motion Fees	\$ 185.00
Jury Fees	608.15
Deposition Costs	8,013.85
Service of Process	300.00
Ordinary Witness Fees	<u>241.10</u>
Total	\$9,348.10

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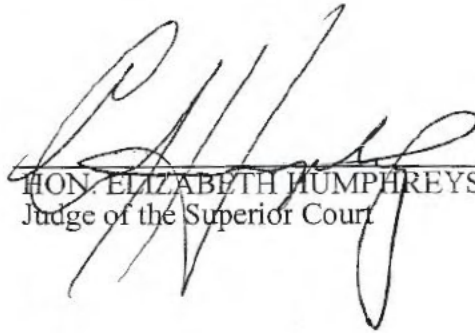
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Costs to Defendants

Filing and Motion Fees	\$ 866.10
Deposition Costs	13,079.70
Service of Process	935.00
Ordinary Witness Fees	831.00
Transcripts	376.00
Models/Blow-ups, etc.	358.94
Court Reporter Fees	6,300.00
Jury Questionnaire Copies	<u>1,252.80</u>
Total	\$23,999.54

Defendants to prepare the Order regarding Defendants' Motion to Tax Costs of prevailing Plaintiff, Amber Lomas, and Plaintiffs' Motion to Tax Defendants' Costs in accordance with Rule of Court 391.

Date: 6/7/13


HON. ELIZABETH HUMPHREYS
Judge of the Superior Court

1 George J. MacKoul, No. 170586
 Sabbah and MacKoul
 2 Attorneys and Counselors at Law
 49 Locust Street
 3 Falmouth, Massachusetts 02540
 4 508-495-4955
 5 Anthony Boskovich, No. 121198
 Law Offices of Anthony Boskovich
 6 28 N. First Street, 6th Floor
 San Jose, California 95113-1210
 7
 8 408-286-5150
 9 Attorneys for Plaintiffs

FILED
 05 JUN 3 AM 11:31
 ROSA J. USKO, CLERK
 BY [Signature]

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and)
 in her capacity as Guardian ad Litem for)
 15 RACHEL LOMAS and AMBER LOMAS,)
 Plaintiffs,)
 16 v.)
 17)
 FATHER JOSEPH ILLO; FATHER FRANCIS)
 18 JOSEPH a.k.a. FATHER FRANCIS ARAKAL;)
 FATHER RICHARD RYAN; BISHOP STEVEN)
 19 BLAIRE; THE DIOCESE OF STOCKTON;)
 DOES 1 through 100,)
 20 Defendants.)
 21 _____)

No. CV 018440
 DECLARATION OF
 GEORGE J. MACKOUL IN
 SUPPORT OF
 MOTION FOR ATTORNEYS'
 FEES
 Date: June 30, 2005
 Time: 9:00 A.M.
 Department: 41
 Judge: Hon. Elizabeth
 Humphreys

22 GEORGE J. MACKOUL declares:

23 1. I am an attorney at law admitted to practice before all courts in
 24 this state. I was one of the attorneys of record for plaintiffs in this
 25 matter.
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2. This declaration is being made to supplement Attorney Boskovich's declaration for attorney's fees and a formal declaration regarding the attorney's fees and costs which I believe are sanctionable with regard to my time and expense as they relate to the statement ("all your mother wants to do is have sex with me") denied by Father Illo, and ultimately proven at trial by plaintiffs.

3. I have direct personal knowledge with regard to Fr. Illo's emotionally abusive behavior prior to filing this lawsuit. I was the plaintiff's counsel in a prior lawsuit filed against the Diocese entitled *Munoz v. Illo and the Diocese of Stockton*. In that case, I alleged that Fr. Illo emotionally abused Mr. Munoz, a homosexual by telling his parents that he was "gay", without Mr. Munoz permission or consent. In addition, I also alleged and had a good faith basis to believe that Fr. Illo accused Mr. Munoz (to third parties) by innuendo of being a pedophile.

4. As a former defense attorney at Haight, Brown and Bonesteel, I was familiar with the "anxiety" defense attorney's have in putting up defendants on the witness stand who may have volatile personality without first having an opportunity to examine their demeanor by way of the deposition process. This is why I advised Attorney Boskovich and we agreed not to take Fr. Illo's deposition prior to trial.

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5. I have **estimated** the following time to have been expended by me in the preparation of pretrial discovery with regard to gathering evidence to prove that Fr. Illo made the statement “all your mother wants to do is have sex with me”, to Amber Lomas.

6. On 10/7/03 I researched and drafted a motion to compel documents and responses to discovery on the Diocese of Stockton, regarding Fr. Illo’s personal files and witness statements. I estimate this took about 10.1 hours.

7. On 10/30/03, Judge Holly heard the motion to Compel. This took about 9.3 hours to prepare, travel to the hearing and argue the motion. This was over the course of two days 10/29 and 10/30/03.

8. On 3/3/04 I attended a hearing on this same motion in this department after Judge Holly recused himself from the case, handing the motion to Judge Humphreys to decide. To prepare for this hearing I had to prepare, travel to court and attend the hearing. This took about 8.5 hours.

9. On 10/1/04 I had a pre deposition meeting with Attorney Boskovich in San Jose California. Prior to this meeting, I reviewed the file and volumes of documents produced by the defendants as

1 a result of a court order. I estimate this took 8.8 hours including
2 the travel time and the meeting with Attorney Boskovich.
3

4 10. From 10-2-04 until 10-3-04 I spent about 10.5 hours traveling to
5 California, and preparing for depositions.
6

7 11. On 10-4-04 I spent about 6.4 hours preparing my clients for their
8 depositions, namely Rachel and Amber Lomas.
9

10 12. On 10-4-04, I deposed Fr. Arakal.
11

12 13. On 10-5-04, I prepared by reviewing the file, for Bishop Blaire's
13 deposition. This took about 3.2 hours.
14

15 14. On 10-5-04, I attended the deposition of Bishop Blaire, which took
16 about 8.0 hours.
17

18 15. On 10-6-04, I attended the deposition of Rachel Lomas. This took
19 about 13.1 hours.
20

21 16. On 10-7-04 I attended the deposition of Amber Lomas. This took
22 about 12. 1 hours.
23

24 17. On 11-16-04 I reviewed the file in preparation for the deposition of
25 various independent witnesses. This took about 3.9 hours.
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18. On 11-7-04, I attended the depositions of Shields, Kristman, Lopez and McGLaughlin. I estimate this took about 11.6 hours.

19. On 11-18-04, I attended the deposition of Mary Mullins, this took about 12. 2 hours.

20. On 11-18-04 and 11-19-04 I prepared for the deposition of McLaughlin and attended her deposition, I estimate between preparation, travel time and attendance at the deposition to be about 12.5 hours.

21. On 12-30-04, I began trial preparation, which I began to organize my file for trial. This took about 3.9 hours.

22. On 1-11-05 I had discussions with Attorney Boskovich regarding the upcoming depositions of Watson, and Ryan. I estimate this took about .2 tenths of an hour.

23. On 1-26-05, I had discussions with Attorney Boskovich regarding the deposition of Kummerle. I estimate this took about.3 tenths of an hour.

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24. On 1-27-04, I had discussions with Attorney Boskovich re: the deposition of Mary Mullins, I estimate this took about .7 tenths of an hour.

25. On 2-8-05 I had discussions with Attorney Boskovich regarding the deposition of Monsignor Ryan and strategy for trial. This took about 1.0 hours.

26. I estimate that between the dates of 2-9-05 and 2-30-05 I spent about 103.3 hours preparing for trial and drafting pre trial motion and doing legal research.

27. I estimate that I therefore spent about 250 hours preparing this case for trial. I would estimate a fair proportion of those hours attributable to proving the statement made by Fr. Illo to be about one third (1/3) of those hours or about 83.4 hours.

28. I estimate that I spent about another 29.6 hours in court before the jury trying the issue of Fr. Illo's statement regarding "all your mother wants to do is have sex with me". This is a reasonable estimate based on a month long trial. I derived this number from estimating each witness's time on the stand attributable to this statement and my preparation and attendance at court time as well as travel time.

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29. Based on the above I estimate the appropriate sanction for failure to admit the statement by Fr. Illo is $(83.4 + 29.6)$ 112.94 hours of attorney time.


30. I bill approximately \$200.00 for my time, I am therefore asking for \$22,588.00 in attorney time to be awarded to me.

31. In addition the following expenses are actionable as they represent costs needed to be expended to prove that Fr. Illo made the statement. Pursuant to the memorandum of cost filed with this court, by plaintiff, the deposition costs of Ms. McGlaughlin, Bishop Blaire, Fr. Arakal, Rachel Lomas, Amber Lomas, Msg. Ryan, Mary Mullins, Anna Lopez, and Owen Kummerle total \$8,855.36. I believe one third of this cost is attributable as prove up sanctions with regard to Fr. Illo's statement, or \$2948.83.

32. Based upon the above, defendant Fr. Joseph Illo should pay to Attorney MacKoul the sum of **\$25,536.83** for his failure to admit that he made the statement and forcing plaintiffs to prove that fact at trial.

1 I declare under penalty of perjury under the laws of the State of California that the
2 foregoing is true and correct.

3
4 Dated: June 2, 2005

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6 George J. MacKoul

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PROOF OF SERVICE

COMMONWEALTH OF MASSACHUSETTS
BARNSTABLE COUNTY

I am employed in the County of Barnstable, Commonwealth of Massachusetts. I am over the age of 18 and not a party to the within action; my business address is 49 Locust Street, Falmouth Massachusetts 02540

On June 2, 2005, I served the within: Declaration of George J. MacKoul in Support of Motion for Attorney's fees. by placing the documents(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Falmouth, Massachusetts addressed as set forth below. (To Mr. Boskovich AND Coughlin only).

by placing the documents(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an overnight carrier for delivery TO Mr. Kozina.

by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

by facsimile to the to the person(s) listed below.

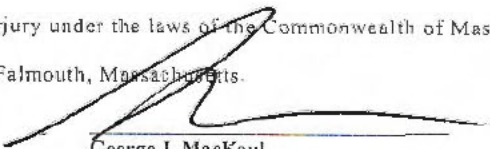
Mr. Vladimir F. Kozina
Attorney at Law
Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Boulevard
Second Floor
Stockton, California 95207-8253

Michael D. Coughlan
Attorney at Law
Coughlan & O'Rourke L.L.P.
3031 W. March Lane, Suite 210 West
Stockton, California 95219

Mr. Anthony Boskovich
Law Offices of Anthony Boskovich
28 North First Street
Sixth Floor
San Jose, California 95113-1210

I declare under penalty of perjury under the laws of the Commonwealth of Massachusetts that the above is true and correct.

Executed on June 2, 2005 at Falmouth, Massachusetts.


George J. MacKoul

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
2 Sabbah and MacKoul
3 Attorneys and Counselors at Law
4 49 Locust Street
5 Falmouth, Massachusetts 02540
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8 508-495-4955

9 Anthony Boskovich, No. 121198
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11 28 N. First Street, 6th Floor
12 San Jose, California 95113-1210
13
14 408-286-5150
15 Attorneys for Plaintiffs

Handwritten: FILED
05 JUN -2 PM 1:32
BY [Signature]
JOSIAH J. JENNIFER, CLERK

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
15 in her capacity as Guardian ad Litem for
16 RACHEL LOMAS and AMBER LOMAS,
17 *Plaintiffs,*
18 v.
19 FATHER JOSEPH ILLO; FATHER FRANCIS
20 JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
21 FATHER RICHARD RYAN; BISHOP STEVEN
22 BLAIRE; THE DIOCESE OF STOCKTON;
23 DOES 1 through 100,
24 *Defendants.*

No. CV 018440

DECLARATION OF ANTHONY
BOSKOVICH IN SUPPORT OF
MOTION FOR ATTORNEYS'
FEES

Date: 30 June 2005
Time: 9:00 A.M.
Department: 41
Judge: Hon. Elizabeth Humphreys

22 Anthony Boskovich declares:

24 1. I am an attorney at law admitted to practice before all courts in this state and am one of
25 the attorneys of record for plaintiffs in this matter.

1 2. On 6 January 2003, plaintiffs propounded requests for Admission on defendant Father
2 Joseph Illo, set one, which included Request 11, which requested that Father Illo admit that he
3 communicated to Amber Lomas on 11 September 2001 that “[a]ll your mother wants is to have sex
4 with me”. A true and correct copy of these requests is attached hereto as Exhibit A.

5
6 3. On 13 March 2003, Father Illo served his verified response denying that he had made the
7 statement. Attached hereto as Exhibit B is a true and correct copy of Father Illo’s verified response.

8
9 4. At trial, Father Illo repeatedly denied ever making the statement despite the fact that
10 Amber Lomas testified that he said it and that Rose Wyeth had testified that he admitted making the
11 statement.

12
13 5. The jury in this matter made a factual finding that Father Illo did indeed make this
14 statement in its response to Interrogatory J(1) in the Special Verdict Form at page 22. A true and
15 correct copy of that verdict form is attached hereto as Exhibit C.

16
17 6. When I first learned of the facts of this case, I found that the most outrageous statement
18 that Father Illo made to Amber Lomas, who was 10 at the time, on 11 September 2001 was the
19 comment about her mother. I consulted with several friends and colleagues and they all concurred
20 that the statement was outrageous.

21
22 7. The fact that Father Illo made the statement was not an insignificant fact, and was critical
23 to the causes of action for intentional and negligent infliction of emotional distress on the issue of
24 outrageous conduct. It was also critical for the claim of defamation.

1 8. Upon speaking with others who knew Father Illo, I came to understand that he has an
2 explosive temper and is very controlling, but also has an extremely charming demeanor that he can
3 summon on demand, and I came to the impression that a significant problem of proof in this case
4 would be to convince a jury that a charming Roman Catholic priest could make such an outrageous
5 statement to a child. This was especially complicated by the fact that defense counsel was making
6 the claim that Kathleen Machado had coerced her daughters to make false claims against Father Illo
7 because of her relationship with him, and the fact that it seemed that there was substantial and vocal
8 dislike of Kathleen Machado at St. Joseph's parish.
9

10 9. Because of these facts, I decided that the only way to prove that Father Illo had made the
11 statement was to not depose him and take advantage of his controlling nature and increase his
12 tension prior to trial. Additionally, I needed to conduct discovery of everybody present on
13 11 Septemebr 2001, as well as Father Ill's superiors, to gain detailed information regarding him and
14 his prior actions. This included information regarding his relationship with plaintiffs, other women
15 in the parish, and his past record with others who disagreed with him.
16

17 10. First and foremost, plaintiffs had to get as many documents as possible regarding Father
18 Illo and the Diocese to prepare for deposition. Defendants were recalcitrant in responding, and
19 plaintiffs were forced to file multiple motions to compel in order to get the necessary documents and
20 information. Once turned over, these documents formed the foundation for plaintiffs' decision who
21 to call as witnesses at deposition, and served as the basis for each and every deposition.
22

23 11. Each deposition was designed to lay a foundation regarding the character, custom, and
24 practice of Father Illo (and some of Father Arakal). The only way to expose the truth was to
25 painstakingly examine each witness on the content of documents, and to microscopically examine
26 what these witnesses saw and heard on 11 September 2001. Most of the witnesses were strongly in
27

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1 favor of Father Illo, so care had to be taken to ensure that the witness was neither given a tip of the
2 purpose of the questions as well as a chance to spin the facts or documents in Father Illo's favor.
3 This caused the depositions to be lengthy.

4
5 12. This strategy involved extensive and painstaking review of all of the documents, and
6 painstaking and detailed depositions of witnesses. Plaintiffs also had to endure lengthy depositions
7 by defendants in their attempt to besmirch the plaintiffs and discredit them.

8
9 13. I keep contemporaneous records of my time and expenditures for the cases I handle.
10 Attached hereto as Exhibit D is a true and correct copy of my time entries for this case. Attached
11 hereto as Exhibit E is a true and correct copy of my expenditures in this case.

12
13 14. The following specific entries are directly related to the proof of the fact that Father Illo
14 made the statement:

15 a. 5/7/03 -- Review Discovery: .1 hours

16 Attributable to the response of Father Illo

17 b. 10/29/03 -- Preparation of notes for hearing: 4.1 hours

18 Preparation of notes for hearing on motion to Compel, in which plaintiffs were
19 seeking the personnel records of Father Illo and the reports of the investigation of the events of 11
20 September 2001

21 c. 10/30/03 -- attend hearing: 8.7 hours

22 This was the hearing on the motion to compel. It is important to note that
23 all hearings and depositions were in Stockton, requiring my travel to and from San Jose.

24 d. 2/4/04 -- Review of motion: .5 hours

25 This was a review of the motion to compel after Judge Holly recused himself
26 and this court took over the case and requested a further argument on the motion

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- e. 2/25/04 – Research: 4.9 hours
- 2/26/04 – Research: .4 hours
- 2/27/04 – Research: 5.9 hours
- 2/28/04 – Research: 2.2 hours
- 2/29/04 – Reply memo re First Amendment: 7.7 hours
- 3/1/04 – Revise reply memo: 3.2 hours
- 3/1/04 – Review *Oxy* decision: .9 hours
- 3/1/04 – Prepare reply: .5 hours
- Total time: 25.6 hours

This time was required to prepare for the further hearing on the motion to compel to get further responses and documents in this matter. The documents that were turned over as a result of this motion were invaluable in gaining further discovery regarding Father Illo that led to information that led to plaintiffs' ability to prove at trial that he made the statement.

- f. 3/3/04 – Attendance at hearing: 8.5 hours
- g. 9/5/04 – Preparation of Order: 3.1 hours

This time was to prepare the order on the motion to compel after plaintiffs prevailed.

- h. 9/28/04 – Review file: 3.2 hours
- 9/28/04 – Review file: .3 hours
- 9/30/04 – Review file: .4 hours
- 10/1/04 -- Review documents: 4.9 hours
- 10/1/04 -- Meeting with George MacKoul to prepare for depositions: 2.1 hours
- 10/2/04 – Prepare for Deposition: 9.4
- 10/3/04 – Prepare for Depositions: 9.1
- Total: 29.2 hours

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1 This time was needed to review approximately 700 pages of
2 documents and prepare for the depositions of Father Arakal, Bishop Blaire, and Mary Mullins.

- 3 i. 10/1/04 -- Preparation of clients for deposition: 6.4 hours
- 4 j. 10/4/04 -- Deposition of Father Arakal: 7.9 hours
- 5 k. 10/4/04 -- Preparation of notes for Deposition of Bishop Blaire: 3.2 hours
- 6 l. 10/5/04 -- Deposition of Bishop Blaire: 8.0 hours
- 7 m. 10/6/04 -- Deposition of Rachel Lomas: 13.1 hours

8 This deposition was relevant to the issue of the statement because it also
9 delved into the family's relationship with Father Illo and his conduct toward the family, which
10 related to overall credibility issues of Amber Lomas and Kathleen Machado

- 11 n. 10/7/04 -- Deposition of Amber Lomas: 12.1 hours
- 12 o. 11/16/04 --Preparation for depositions of Shields, Kristman, Lopez, and
13 McLoughlin: 5.9 hours

14 These witnesses are related to the conduct and character of Father Illo.
15 Yvonne McLoughlin was present on 11 September 2001.

- 16 p. 11/17/04 --Deposition of Shields, Kristman, Lopez, and McLoughlin, noticed by
17 defendants: 11.6 hours

- 18 q. 11/18/04 - Deposition of Mary Mullins: 12.2 hours

19 Ms. Mullins, as Father Illo's secretary, was a critical witness and absolutely
20 necessary to establish what happened on 11 September 2001 and thereafter, as well as Father Illo's
21 character, customs, and habits

- 22 r. 11/18/04 - Preparation for McLoughlin Deposition: 1.1 hours
- 23 s. 11/19/04 - Deposition of Yvonne McLoughlin: 11.4 hours

24 Ms. McLoughlin was present on 11 September 2001 and was present when
25 Father Illo admitted he had made the statement. Extensive time was need with Ms. McLoughlin
26 because she took contemporaneous notes and then destroyed them after a conversation with former
27

1 parish business manager Owen Kummerle. Ms. McLoughlin's deposition was further complicated
2 by her decision to invoke her Fifth Amendment privilege against self incrimination.

3 t. 12/30/04 – Review of Depositions: 6.9 hours

4 This time was necessary to prepare for the depositions of Monsignor Ryan
5 Bishop Blaire, as well as general trial preparation.

6 u. 1/11/05 – Deposition of Deanna Watson, noticed by defendants: 9.2 hours

7 This deposition was crucial because of Ms. Watson's testimony regarding
8 Father Illo's conduct and demeanor in general and with respect to the Machado family

9 v. 1/26/05 – Deposition of Owen Kummerle: 7.9 hours

10 Mr. Kummerle's testimony was critical in determining the character and
11 practice of Father Illo as well as the event of 11 September 2001.

12 w. 1/26/05 – Review documents: 2.1 hours

13 This was critical in preparing for Mary Mullins' further deposition

14 x. 1/27/05 -- Deposition of Mary Mullins: 4.4 hours

15 Ms. Mullins never appeared for the continuation of her deposition because
16 she was never notified by defense counsel who was representing her.

17 y. 2/8/05 -- Prepare for deposition of Monsignor Ryan: 5.9 hours

18 The deposition of Monsignor Ryan was critical to determine Father Illo's
19 character traits, pattern and practice, as well as what he learned about the events of 11 September
20 2001. During the canonical investigation, Monsignor Ryan was told of the statement and
21 investigated further. Father Illo denied making the statement

22 z. 2/9/05 – Deposition of Monsignor Ryan: 11.8 hours

23 aa. 2/9/05 – Trial Preparation: 6.8 hours

24 bb. 2/10/05 – Prepare for deposition of Bishop Blaire: 8.2 hours

25 cc. 2/11/05 – Deposition of Bishop Blaire: 8.6 hours

26 dd. 2/14/05 – trial preparation: 6.3 hours

- 1 ce. 2/15/05 – Trial preparation: 7.2 hours
- 2 ff. 2/16/05 – Trial preparation: 7.7 hours
- 3 gg. 2/17/05 – trial preparation: 9.9 hours
- 4 hh. 2/18/05 – trial preparation: 10.2 hours
- 5 ii. 2/19/05 – trial preparation: 10.2 hours
- 6 jj. 2/20/05 – trial preparation: 12.1 hours
- 7 kk. 2/21/05 – trial preparation: 4.7 hours
- 8 ll. 2/22/05; file motions: 6.1 hours
- 9 mm. 2/23/05 – trial preparation: 7.1 hours
- 10 nn. 2/24/05 – trial preparation: 12.2 hours
- 11 oo. 2/25/05 – attendance at hearing: 8.5 hours
- 12 pp. 2/26/05 – trial preparation: 3.2 hours
- 13 qq. 2/27/05 – revision of juror questionnaire: 2.2 hours
- 14 rr. 2/28/05 – prepare opposition: 1.9
- 15 Subtotal (preparation): 354 hours
- 16 ss. 3/3/05 - 3/28/05: Trial and preparation: 245.0 hours
- 17

18 12. All of the trial hours and preparation hours during trial are not attributable to proving
19 that Father Illo made the statement, but all time was reasonably expended. I would estimate that
20 a fair proportion of the trial preparation time to proving the statement would be one third, because
21 the statement was the key to proving the claims of Amber Lomas and Kathleen Machado. On this
22 basis, the number of pretrial hours subject to the sanction are 118 hours.

23
24 13. With respect to trial, I would attribute of the 245 “trial day” hours that the following
25 were attributable to proof of the denied statement:

- 26 a. Preparation and testimony of Deanna Watson: 2.5 hours
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- b. Preparation and testimony of Mary Mullins: 7 hours
- c. Preparation and testimony of Own Kummerle: 4 hours
- d. Preparation and testimony of Bishop Blaire: 5 hours
- e. Preparation and testimony of Father Illo: 15 hours
- f. Attendance at testimony of Amber Lomas: 4 hours
- g. Attendance at testimony of Kathleen Machado: 10 hours
- h. Preparation and testimony of Rose Wyeth: 4 hours
- I. Preparation and testimony of Monsignor Ryan: 6 hours
- k. Preparation and testimony of Elaine Shields: 2 hours
- l. Attendance at testimony of Father Arakal: 1 hour
- m. Attendance at testimony of Yvonne McLoughlin: 2 hour
- n. Cross-examination of final defense witnesses: 2 hours

Total trial hours: 64.5 hours

14. Based upon the above, the appropriate sanction for failure to admit the statement by Father Illo is 182.5 hours of my time.

15. I bill at the rate of \$250 per hour for my time, which given my training and experience is a reasonable hourly rate. I am readily familiar with the prevailing market rate for attorneys with my qualifications, resources, and experience in Northern California, and know that \$250 per hour is within the range of those rates, near the low end of the scale. This hourly rate has been determined to be reasonable in the past by the Santa Clara County Superior Court as well as the United States District Court for the Northern District of California. Based upon this, sanctions for attorney's fees in the amount of \$45,625 should be awarded to me.

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 16. I additionally incurred expenses with respect to the sanctionable failure to admit making
2 the statement. These expenses include travel expenses in the sum of \$2,586.15, as documented on
3 Exhibit E. Based again upon the estimate of one third of the total as the reasonable cost of proving
4 the conduct, travel expenses should be allowed in the sum of \$862.05. Additionally, witness fees
5 were paid to Owen Kummerle in the sum of \$63.20, and jury fees in the sum of \$200. Total
6 expenses should be allowed in the sum of \$1,125.25.

7
8 17. Based upon the above, defendant Illo should pay to Anthony Boskovich the sum of
9 \$46,750.25 for his failure to admit that he made the statement and forcing plaintiffs to prove that fact
10 at trial.

11
12 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
13 and correct.

14
15 Dated: 30 May 2005

16
17
18
19
20 
21 _____
22 Anthony Boskovich

Quintol



EXHIBIT A

1 George J. MacKoul (Bar No. 170586)
2 SABBAH AND MACKOUL
3 Attorneys and Counselors at Law
4 49 Locust Street
5 Falmouth, Mass 02540
6 Phone: 508-495-4955
7 Fax: 508-495-4115

COPY

8 Anthony Boskovich
9 LAW OFFICES OF ANTHONY BOSKOVICH
10 28 North First Street 6th Floor
11 San Jose, California 95113-1210
12 Phone: 408-286-5150
13 Fax: 408-286-5170

14 Attorneys for The Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 Kathleen Machado as an individual and as)
17 Guardian ad Litem for, Rachel Lomas and)
18 Amber Lomas,)
19 Plaintiffs,)

Case No.: CV018440

REQUEST FOR ADMISSION

20 vs.)

21 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr.)
22 Francis Arakal, Fr. Richard Ryan, Bishop)
23 Steven Blaire and The Diocese of Stockton)
24 and Does 1-100,)
25 Defendants)

Propounding Party: Plaintiff, Kathleen Machado

Responding Party: Defendant, Fr. Joseph Illo

Set No. 1.

Pursuant to C.C.P. 2033, Plaintiff Kathleen Machado request answers under oath in 30 days from the date of this request to the following factual admissions:

1 **DEFINITIONS**

2 The words in quotes in this "Definitions" section regardless of how they appear in the
3 actual requests below should be taken to be defined as follows, when answering these requests
4 for factual admissions:

5 The term: "Documents" as used in this request means all documents as defined by
6 California Evidence Code Section 250. The term documents also includes any information
7 maintained by electronic means, including but not limited to those maintained on a computer
8 (either personal or network based) or any other electronic device which stores information on a
9 "Hard Drive" and further includes e-mail messages, storage components otherwise known as
10 "cookies", palm pilots, laptop computers, voice mail messages,

11 The term: "You" and "Yours" means the Responding Party identified above which
12 includes and individual authorized to act on behalf of the Responding Party identified above,
13 their agents, assigns, investigators, accountants, priests, nuns, deacons, lay ministers, Bishops,
14 Cardinals, Pope John Paul II, or any member of the Vatican.

15 The term: "Incident" means the accident, which is the subject matter of plaintiffs'
16 complaint.

17 PLEASE BE FURTHER WARNED THAT PURSUANT TO C.C.P. 2033, THAT
18 SHOULD YOU DENY ANY OR ALL OF THE FOLLOWING REQUESTS AND FORCE
19 THE PROPOUNDING PARTY TO PROVE THE FACTUAL ADMISSIONS AT TRIAL,
20 REGARDLESS OF THE MONTARY VALUE OF THE VERDICT, PLAINTIFFS WILL
21 SEEK PROVE UP SANCTIONS, INCLUDING BUT NOT LIMITED TO COSTS AND
22 ATTORNEY'S FEES.

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REQUEST FOR ADMISSION NO. 1:

Admit that YOU were a named defendant in a prior defamation action filed by plaintiff Jose Munoz.

REQUEST FOR ADMISSION NO. 2:

Admit that on or about September 11, 2001 plaintiff Amber Lomas, informed/alleged to YOU , in private, that defendant Arakal, made physical contact with the breast of plaintiff, Rachel Lomas.

REQUEST FOR ADMISSION NO. 3:

Admit that on or about September 11, 2001, Plaintiff Amber Lomas requested that the information communicated to YOU (on September 11, 2001), regarding the alleged physical contact by defendant Arakal to the breast of Rachel Lomas, be kept confidential.

REQUEST FOR ADMISSION NO. 4:

Admit that on or about September 11, 2001, the information communicated to YOU by plaintiff Amber Lomas was republished, disseminating and/or repeated to Defendant Arakal.

REQUEST FOR ADMISSION NO. 5:

Admit that on or about September 11, 2001, the information communicated to YOU by plaintiff Amber Lomas was republished/disseminating and/or repeated to third parties other than defendant Arakal (namely members of YOUR office staff at St. Josephs Catholic Church).

1 REQUEST FOR ADMISSION NO. 6:

2 Admit that YOU violated Roman Catholic Cannon Law by republishing/disseminating and/or
3 repeating to third parties the information communicated to YOU, in private, by Amber Lomas on
4 or about September 11, 2001.

5
6 REQUEST FOR ADMISSION NO. 7:

7 Admit that YOU did not communicate the information (specifically the physical contact by
8 defendant Arakal to the breast of Amber Lomas) communicated to YOU by plaintiff Amber
9 Lomas on or about September 11, 2001 to defendant Diocese of Stockton before January of
10 2002.

11
12 REQUEST FOR ADMISSION NO. 8:

13 Admit that YOU did not communicate that information (specifically the physical contact by
14 defendant Arakal to the breast of Amber Lomas) communicated to YOU by plaintiff Amber
15 Lomas on or about September 11, 2001 to the police on or before January of 2002.

16
17 REQUEST FOR ADMISSION NO. 9:

18 Admit that YOU did not communicate that information (specifically the physical contact by
19 defendant Arakal to the breast of Amber Lomas) communicated to YOU by plaintiff Amber
20 Lomas on or about September 11, 2001 to YOUR supervisor and/or superiors on or before
21 January of 2002.

22
23 REQUEST FOR ADMISSION NO. 10:

24 Admit that YOU communicated to plaintiff Amber Lomas on or about September 11, 2001 the
25 following statement: "We have never been friends" or similar words to that effect.

1 **REQUEST FOR ADMISSION NO. 11:**

2 Admit that YOU communicated to plaintiff Amber Lomas on or about September 11, 2001 the
3 following statement: "All your mother wants is to have sex with me" or similar words to that
4 effect.
5

6 **REQUEST FOR ADMISSION NO. 12:**

7 Admit that on or about February 15, 2002, YOU communicated to plaintiffs Rachel and Amber
8 Lomas that they no longer could serve as alter servers for YOU at St. Josephs Catholic Church.
9

10 **REQUEST FOR ADMISSION NO. 13:**

11 Admit that YOU directed members of YOUR staff to harass and intimidate plaintiff Machado,
12 after September 11, 2001.
13

14 **REQUEST FOR ADMISSION NO. 14:**

15 Admit that YOU threatened Elaine Shields with being dismissed from her parish ministries if
16 Elaine Shields continued support plaintiff Machado in her alleged claims against YOU, which
17 are the subject matter of plaintiff Machado's complaint.
18

19 **REQUEST FOR ADMISSION NO.15:**

20 Admit to the genuiness of the document attached as Exhibit A, a July 5, 2002 letter addressed to
21 Elaine Shields and authored by YOU.
22

23 **REQUEST FOR ADMISSION NO. 16:**

24 Admit to the genuiness of the document attached as Exhibit B, a July 20, 2002 letter addressed to
25 Elaine Shields and authored by YOU.

1 REQUEST FOR ADMISSION NO. 17:

2 Admit that YOU verbally threatened Elaine Shields for supporting plaintiff Machado in her
3 alleged claims against YOU, which are the subject matter of plaintiff Machado's complaint.
4

5 REQUEST FOR ADMISSION NO. 18:

6 Admit that YOU dismissed plaintiff Rachel and Amber Lomas from religious education classes
7 in May of 2002.
8

9 REQUEST FOR ADMISSION NO. 19:

10 Admit that YOU dismissed the plaintiffs from membership YOUR parish, (St. Josephs Catholic
11 Church), in May of 2002.
12

13 REQUEST FOR ADMISSION NO. 20:

14 Admit that YOU communicated to Eva Kristman on or about July 20, 2002 to "discontinue her
15 friendship" with plaintiff Machado.
16

17 REQUEST FOR ADMISSION NO. 21:

18 Admit that YOU communicated to Eva Kristman on or about July 20, 2002, that plaintiff
19 Machado was "mentally ill".
20

21 REQUEST FOR ADMISSION NO. 22:

22 Admit that YOU communicated to Eva Kristman on or about July 20, 2002, that plaintiff
23 Machado was interested in having sexual relations with YOU.
24
25

1 REQUEST FOR ADMISSION NO. 23:

2 Admit that YOU threatened Eva Kristman on or about July 20,2002 not to comply with any
3 investigations and or investigators regarding the matters which are the subject matter of plaintiffs
4 complaint.

5
6 REQUEST FOR ADMISSIONS NO. 24:

7 Admit that YOU had a meeting with defendant Arakal and Ms. Elaine Shields sometime in the
8 fall of 2001 and during that meeting YOU communicated to Ms. Elaine Shields to disassociate
9 herself from plaintiff Machado because Ms. Machado was "mentally ill".

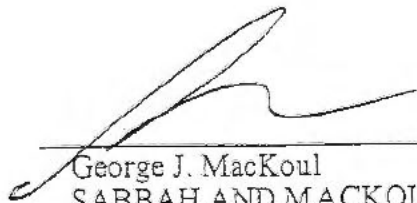
10
11 REQUEST FOR ADMISSION NO. 25:

12 Admit that YOU threatened Deanna Watson, to "make her life difficult" when Ms. Deanna
13 Watson discussed with YOU her thoughts about filing a civil action for
14 discrimination/harassment claim against the defendant Diocese of Stockton.

15
16 REQUEST FOR ADMISSION NO. 26:

17 Admit that on or about April 13, 2002, YOU yelled at Ms. Deanna Watson in front of her
18 children after Church, and stating that Ms. Watson was "destroying the church and destroying
19 Father Illo because of her support and friendship with plaintiff Machado" or words to that effect.

20
21 Dated this 4th day of January, 2002

22
23 
24 George J. MacKoul
25 SABBAH AND MACKOUL
Attorneys for the Plaintiffs

PROOF OF SERVICE

COMMONWEALTH OF
MASSACHUSETTS
BARNSTABLE COUNTY

I am employed in the County of Barnstable, Commonwealth of Massachusetts. I am over the age of 18 and not a party to the within action; my business address is 49 Locust Street, Falmouth Massachusetts 02540

On January 06, 2003, I served the within: **REQUEST FOR ADMISSIONS SET ONE DIRECTED TO DEFENDANT ILLO BY PLAINTIFF MACHADO.**

_____ on the interested parties in said action by transmitting a true copy of said document by facsimile machine. The documents listed above to the fax number(s) set forth below on this date from (508) 495-4115, the transmission was reported as complete and without error. Said fax transmission occurred as stated in the transmission record attached hereto. Said fax transmission was directed to the names and addresses stated below.

_____ by placing the documents(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Falmouth, Massachusetts addressed as set forth below.

 X by placing the documents(s) listed above in a sealed envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to an overnight carrier for delivery.

_____ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Mr. Anthony Boskovich
28 North First Street
Sixth Floor
San Jose, California 95113-1210
(408) 286-5150
408-286-5170

CO-COUNSEL FOR PLAINTIFF

Paul N. Balestracci
Attorney at Law
Neumiller & Beardslee
509 West Weber Avenue
Fifth Floor
Stockton, California 95203

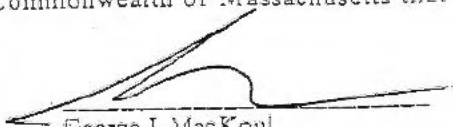
COUNSEL FOR DEFENDANTS DIOCESE OF STOCKTON,
DEFENDANTS BLAIRE, ILLO AND RYAN.

Michael D. Coughlan
Attorney at Law
Coughlan & O'Rourke L.L.P.
3031 W. March Lane, Suite 210 West
Stockton, California 95219

COUNSEL FOR DEFENDANT ARAKAL

I declare under penalty of perjury under the laws of the Commonwealth of Massachusetts that the above is true and correct.

Executed on January 6, 2003 at Falmouth, Massachusetts.


George J. MacKoul