

FILE ANY ADDITIONAL
DOCUMENTS IN

FILE # 2

THIS FILE FOLDER CONTAINS DOCUMENTS DATED:

9-10-2002 TO 1-23-04
02-30-04

KATHLEEN MACHADO ET AL

Plaintiff(s),

VS

FR. JOSEPH ILLO ET AL

Defendant(s).

JAN 23 2004

Filed: _____

ROSA JUNQUEIRO
CLERKBy:  _____

DEPUTY

NOTICE OF HEARING

Case Number:

| | | |
|----------------|----------|---------------------|
| Hearing Date: | Time: | Department or Room: |
| March 03, 2004 | 09:00 AM | 41 |

CV018440

Location:
222 E. Weber Ave., Stockton, CA 95202

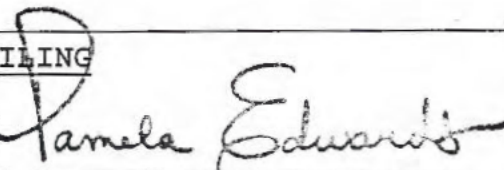
To: Each Party
or
To: The Attorneys of Record

You are notified that this case is set for: Trial setting conference, at the above date, time, department and location. If you have any questions, please contact the Calendar Clerk at (209) 468-2867.

ROSA JUNQUEIRO, Court Administrator

CERTIFICATE OF MAILING

I declare under penalty of perjury, I am not a party to the within action and hereby certify: That I served the foregoing by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid in the United States Mail at Stockton California on JAN 23 2004, addressed as follows:



Signature

GEORGE J MACKOUL
SABBAH MACKOUL
49 LOCUST ST
PALMOUTH MA 02640

ANTHONY BOSKOVICH
LAW OFFICES OF ANTHONY BOSKOVICH
28 N FIRST STREET
6TH FLOOR
SAN JOSE CA 95113

PAUL BALESTRACCI
NEUMILLER BEARDSLEE
P O BOX 20
509 W WEBER AVENUE
STOCKTON CA 95201

MICHAEL D COUGHLAN
COUGHLAN O ROURKE
3031 W MARCH LANE
SUITE 210 WEST
STOCKTON CA 95219

NOTICE OF HEARING

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

ELIZABETH HUMPHREYS

Hon. Carter P. Holly

01/21/04 08:45 AM

41
42

met at Stockton, California

Date Dept Judge

CV018440 KATHLEEN MACHADO ET AL
VS
FR. JOSEPH ILLO ET AL

Clerk: ~~Netta Atwater~~ CHARLENE GRAY
Reporter/Tape:
Bailliff: KEITH SALES
Interpreter:

- [PLTF] Kathleen Machado
- [DEFT] Francis Joseph Fr. AKA Joseph Arakal
- [DEFT] Joseph Illo Fr.
- [DEFT] Richard Ryan Fr.
- [DEFT] Bishop Steven Blaire
- [DEFT] The Diocese of Stockton

- Sabbah & MacKoul
- Michael Coughlan & O'Rourke*
- Paul Balestracci* NEUMILLER & BEARDSLEE
- NEUMILLER & BEARDSLEE
- NEUMILLER & BEARDSLEE
- NEUMILLER & BEARDSLEE

Matter is continued to 3-3-04 @ 9am in Dept. _____ due to _____

- Case Management Conference
- Settlement Conference
- Trial Setting

- Dropped
- Uninsured motorist case--exempt from Fast Track

Nature of proceedings: Case management conference;

- _____ Subsequent day hearing/trial held

Matter is ordered referred to judicial arbitration after _____ days.

Discovery remain open 30 days before trial.

Case is to be tried as a Jury Trial Court Trial.

Estimated length of time for trial: _____

Case is set for trial on _____ in _____

Settlement conference set for _____ in _____

Settlement Conference held Settlement Conference NOT held

No settlement--trial to remain as set.

Case settled. Trial date _____ is vacated.

Trial date reset to _____

Issue an OSC re: _____

No Proof of Service No Case Management Statements

Failure to appear Other _____

Clerk's Office to send notice.

JAN 23 2004

- Arbitration Clerk
- Fast Track Clerk
- Counsel
- Other

Filed JAN 5 - 2004
JEANNE MILLSAPS
CLERK
By Miltonetta Atwater
DEPUTY

Space above for use of Court only
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

KATHLEEN MACHADO, et al.,
Plaintiff(s)

vs.

FR. JOSEPH ILLO, et al.,
Defendant(s)

Case No. ~~CV07340~~ Dept. 42
CV018448 *RA*

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned, declare that I am a Deputy County Clerk of the County of San Joaquin, State of California, and not a party to the action, and that on Jan 5, 2004 I deposited in the United States Post Office at Stockton, California, true and correct copies MINUTE ORDER printed 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 addresses below:

GEORGE J. MACKOUL
SABBAH AND MACKOUL
Attorneys and Counselors at Law
49 Locust Street
Falmouth, Mass 02540

ANTHONY BOSKOVICH
LAW OFFICES OF ANTHONY BOSKOVICH
29 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

PAUL N. BALESTRACCI
ATTORNEY AT LAW
NEUMILLER & BEARDSLEE
509 West Weber Avenue, 5th Floor
Stockton CA 95203

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, California,
ON the date above specified.

Miltonetta Atwater
Deputy County Clerk

CERTIFICATE OF SERVICE BY MAILING

SCANNED

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

**KATHLEEN MACHADO, et al.,
Plaintiff(s)**

Date of Hearing: Oct. 30, 2003

vs.

Judge: HON. CARTER P. HOLLY

**FR. JOSEPH ILLO, et al.,
Defendant(s)**

Clerk: Miltonetta Atwater

Bailiff: AnnaMarie DiGiorgio

Reporter: Julie Codero

Case No. CV018440

NATURE OF HEARING: PLAINTIFF'S DISCOVERY MOTIONS

Appearances:

Plaintiff(s): ANTHONY BOSKOVICH and GEORGE MACKOUL, II

Defendant(s): PAUL BALESTRACCI and MICHAEL COUGHLAN

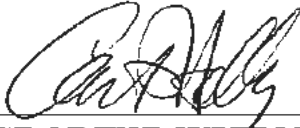
This matter came on for hearing at 9:00 a.m. in Department 42 of the Superior Court. Counsel were present for their respective parties. Matter was argued before the court and submitted. Court took the matter under submission and now reuders the following order:

The Court, having reviewed Code of Civil Procedure §170.1 finds that it must disqualify itself because Judge Carter Holly's spouse is employed as a teacher at the Annunciation School which is a part of the "Diocese", a defendant in this action, and even if this would possibly not be a "financial interest", under §170.1(a)(3)(A); §170.1(a)(6)(C)requires that Judge Holly he disqualified, and it is so ordered.

These motions will be rescheduled for hearing before the Judge assigned this case.

Dated:

January 5, 2004



**JUDGE OF THE SUPERIOR COURT
CARTER P. HOLLY**

Under Subm

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

11/17/03 08:45 AM 42 met at Stockton, California
Date Dept

Hon. Carter P. Holly
Judge

CV018440 KATHLEEN MACHADO ET AL
VS
FR. JOSEPH ILLO ET AL

Clerk: Netta Atwater
Reporter/Tape:
Bailliff: A. Di Giorgio
Interpreter:

- [PLTF] Kathleen Machado
- [DEFT] Joseph Illo Fr.
- [DEFT] Francis Joseph Fr. AKA Joseph Arakal
- [DEFT] Richard Ryan Fr.
- [DEFT] Bishop Steven Blaire
- [DEFT] The Diocese of Stockton

George Mackoul Law offices of Anthony Boskovich
 NEUMILLER & BEARDSLEE
 Coughlan & O'rouke
 NEUMILLER & BEARDSLEE
 NEUMILLER & BEARDSLEE
 NEUMILLER & BEARDSLEE

Matter is continued to 1/21/04 @ 8:45 am in Dept. 42 due to

Case Management Conference Settlement Conference Trial Setting

- Dropped
- Uninsured motorist case--exempt from Fast Track

Nature of proceedings: Case management conference;

Subsequent day hearing/trial held

Matter is ordered referred to judicial arbitration after _____ days.

Discovery remain open 30 days before trial.

Case is to be tried as a Jury Trial Court Trial.

Estimated length of time for trial: _____

Case is set for trial on _____ in _____

Settlement conference set for _____ in _____

Settlement Conference held Settlement Conference NOT held

No settlement--trial to remain as set.

Case settled. Trial date _____ is vacated.

Trial date reset to _____

Issue an OSC re: _____

No Proof of Service No Case Management Statements

Failure to appear Other _____

Clerk's Office to send notice.

- Arbitration Clerk
- Fast Track Clerk
- Counsel
- Other

MINUTE ORDER -- CASE MANAGEMENT CONFERENCE/SETTLEMENT CONFERENCE/TRIAL SETTING

SCANNED

1 **equivalent of no response at all.** See *Appleton v. Sup.Ct. (Cook)* (1988) 206 Cal.App.3d 632,
 2 636, 253 Cal.Rptr. 762, 764. Further, the defendant simply ignores established case law cited
 3 in plaintiff's motion with regard to the authority, which prevents him from filing these
 4 objections.

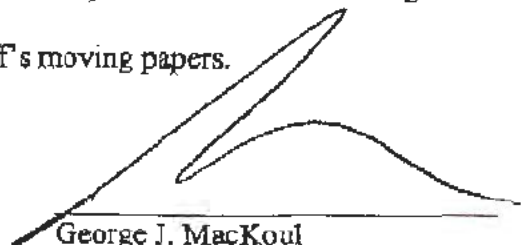
5
 6 **II.**
 7 **DEFENDANT CLEVERLY AMENDS HIS RESPONSES TO COVER UP AND DENY**
 8 **THE IDENTITY OF THE UNPRIVILEGED DOCUMENTS HE ADMITTED BEING**
 9 **IN POSSESSION OF IN HIS ORIGINAL RESPONSES.**

10 Referencing request no. 5, 15, 16, and 17, plaintiff urges the court to compare the
 11 original responses to the supplemental ones now filed with plaintiff. Plaintiff attaches same as an
 12 exhibit to this motion. ^(Exhibits) The court will see that the names of the employees of the co-defendant,
 13 whom the responding party admitted having the statements of have now disappeared.

14 **III.**
 15 **DEFENDANT SHOULD BE SANCTIONED BECAUSE HE DID NOT MEET AND**
 16 **CONFER WITH PLAINTIFF, FORCING HIM TO FILE THIS MOTION.**
 17 **(See Plaintiff's Moving Papers)**

18 Based on the foregoing plaintiff respectfully requests that his motion be granted and that
 19 sanctions be granted in accordance with plaintiff's moving papers.

20 Dated: October 24, 2003

21 
 22 George J. MacKoul
 23 Attorney for Plaintiffs

1 MICHAEL D. COUGHLAN (CSB #124398)
 2 ATTORNEY AT LAW
 3 3031 West March Lane, Suite 210 West
 4 Stockton, CA 95219
 5 (209) 952-3878

6 Attorneys for Defendant, FR. FRANCIS ARAKAL JOSEPH

7
 8
 9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

10 KATHLEEN MACHADO as an individual and)
 11 as Guardian Ad Litem for RACHEL LOMAS)
 12 and AMBER LOMAS)
 13 Plaintiffs,

Case No.: CV018440
 AMENDED
 RESPONSES TO REQUEST FOR
 PRODUCTION OF DOCUMENTS

14 vs.

15 FR. JOSEPH ILLO, FR. FRANCIS JOSEPH aka)
 16 FR. FRANCIS ARAKAL, FR. RICHARD)
 17 RYAN, BISHOP STEVEN BLAIR and THE)
 18 DIOCESE OF STOCKTON)
 19 Defendants.

20 PROPOUNDING PARTY: Plaintiff, RACHEL LOMAS

21 RESPONDING PARTY: Defendant, FR. FRANCIS ARAKAL JOSEPH

22 SET NUMBER: ONE (1)

23 These responses to Request for Production of Documents are served pursuant to Code of Civil
 24 Procedure section 2031. In answering these requests, the Propounding Party is being furnished
 25 with such information as is presently available to this Responding Party, which may not be
 26 entirely reliable since discovery is still continuing. Since discovery is still continuing and
 27 information is still being ascertained, these responses may not be admissible in evidence. This
 28 Responding Party expressly reserves the right to introduce at trial evidence and/or documents
 that are presently unknown to this Responding Party and/or are discovered subsequent to the date

"Exhibit A"

RESPONSE TO DEMAND FOR PRODUCTION OF DOCUMENTS AND THINGS

1 of these responses. Further, this Responding Party expressly reserves the right to amend these
2 responses without motion at any time, including up to and at the trial in this matter.

3 **GENERAL OBJECTION NUMBER 1**

4 THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS ON THE GROUNDS THAT
5 THIS RESPONDING PARTY HAS NOT YET FULLY COMPLETED THE
6 INVESTIGATION, DISCOVERY AND TRIAL PREPARATION IN THIS MATTER

7 This Responding Party has not yet fully completed the investigation of the facts relating to
8 this case, and has not completed discovery in this matter, nor completed preparation for trial.

9 All of the responses contained herein are based only upon such information and documents
10 that are presently available to and specifically known to this Responding Party at this time, and
11 discloses only those contentions that presently occur to this Responding Party. It is anticipated
12 that further discovery, independent investigation, legal research and analysis may supply
13 additional facts and add meaning to known facts; as well as establish new factual conclusions
14 and legal contentions, all of which may lead to substantial additions to, changes in, and
15 variations from the conclusions and contentions set forth herein.

16 The responses and objections set forth herein are given without prejudice to this Responding
17 Party's right to produce evidence on any subsequently discovered fact(s), or of fact(s) that this
18 Responding Party may later recall. Accordingly, this Responding Party expressly reserves the
19 right to change any and all responses contained herein as additional facts are ascertained,
20 analyses are made, legal research is completed and additional contentions are developed.

21 The responses contained herein are made in a good faith effort to supply as much factual
22 information and as much specification of legal contentions as is presently known, but should not,
23 in any way, be to the prejudice of this Responding Party in relation to further discovery,
24 research, analysis, or presentation of evidence at trial.

25 **GENERAL OBJECTION NUMBER 2**

26 THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS ON THE GROUNDS AND
27 TO THE EXTENT THAT THEY SEEK PRIVILEGED, CONFIDENTIAL AND
28 UNDISCOVERABLE INFORMATION THAT IS PROTECTED BY THE ATTORNEY-
CLIENT RELATIONSHIP AND/OR THE ATTORNEY WORK PRODUCT DOCTRINE

This Responding Party objects to these Requests to the extent that they seek privileged,
confidential and undiscoverable information that is absolutely and/or conditionally protected by
the attorney-client relationship and/or the attorney work product doctrine.

1 The responses contained herein are made in a good faith effort to supply as much factual
2 information and as much specification of legal contentions as is presently known, but should not,
3 in any way, be to the prejudice of this responding party, and to the extent that this responding
4 party discloses privileged or confidential information, if any, said disclosure shall not, in any
5 way, be deemed or construed to be a waiver of this Responding Party's right too invoke and
6 assert the attorney-client privilege and/or attorney work product doctrine.

7 **GENERAL OBJECTION NUMBER 3**

8 THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS ON THE GROUNDS AND
9 TO THE EXTENT THAT THE TERM "INCIDENT" USED THROUGHOUT IS VAGUE AS
10 TO WHICH SPECIFIC EVENT THE PROPOUNDING PARTY IS REFERRING

11 Plaintiff's complaint refers to alleged acts and omissions of various defendants, thereby
12 creating uncertainty and ambiguity as to the definition of the term "incident" as used throughout
13 these interrogatories.

14 **RESPONSE TO REQUEST FOR PRODUCTION (SET ONE)**

- 15
- 16 1. Responding party objects to the demand on the grounds that it seeks the
17 discovery of information that is neither relevant to any issue in this matter nor
18 reasonably calculated to lead to the discovery of admissible evidence. Without
19 waiving the objections, defendant is unable to comply with this request because
20 he is not of the existence of any such documents.
 - 21 2. Defendant objects to this request on the grounds that it seeks the discovery of
22 information protected by the defendant's right of privacy. Defendant further
23 objects that the demand is harassing and oppressive, an abuse of the discovery
24 process and that it seeks the discovery of information that is neither relevant to
25 any issue in this matter nor reasonably calculated to lead to the discovery of
26 admissible evidence.
 - 27 3. Defendant objects to this request on the grounds that it seeks privileged
28 information protected by the defendants right of privacy and the privacy and

RESPONSE TO DEMAND FOR PRODUCTION OF DOCUMENTS AND THINGS

1 religious freedom rights of third persons, not parties to this lawsuit. Defendant
2 further objects that the demand seeks information that is neither relevant to any
3 issue in this matter nor reasonably calculated to lead to the discovery of
4 admissible evidence. Without waiving the objections, defendant is unable to
5 comply with the request because he has no such personal diary or journal.

6 4. This responding defendant objects on the grounds that the request is vague and
7 ambiguous and that it seeks the production of privileged documents protected
8 by the defendant's right of privacy. Defendant further objects that the demand
9 is oppressive, harassing and seeks the discovery of information that is neither
10 relevant to any issue in this matter nor reasonably calculated to lead to the
11 discovery of admissible evidence. Without waiving the objections defendant is
12 unable to comply with this request because no such documents exist.

13 5. Defendant objects on the grounds that the request seeks the production of
14 privileged documents protected by the defendant's right of privacy and the
15 rights of privacy and/or religious freedom of other persons, not party to this
16 action to the extent that the calendar identifies other individuals. Defendant
17 further objects that the demand is overbroad and seeks the discovery of
18 information that is neither relevant to any issue in this matter nor reasonably
19 calculated to lead to the discovery of admissible evidence. Without waiving the
20 objections, after a diligent search and a reasonable inquiry defendant responds
21 that there are no notations in the subject calendar that in any way relate to the
22 plaintiffs in the subject action.

23 6. Defendant objects on the grounds that the request seeks the production of
24 documents that are privileged and protected by the defendant's right of privacy
25 and the rights of privacy and/or religious freedom of third persons, not party to
26 this action. Defendant further objects that the request is overbroad and seeks
27 the production of information that is neither relevant to any issue in this lawsuit
28 nor reasonably calculated to lead to the discovery of admissible evidence.

RESPONSE TO DEMAND FOR PRODUCTION OF DOCUMENTS AND THINGS

1 Defendant in not in the possession and or control of any such telephone bills,
2 which are the property of St. Joseph's Parish.

3 7. Defendant objects to this request on the grounds that the request seeks the
4 production of documents protected by the attorney client privilege and/or
5 attorney work product doctrine. Without waiving the objections, defendant is in
6 possession of his own memorandum written October 5, 2001 at the request of
7 counsel for the Diocese of Stockton in anticipation of litigation, to which
8 defendant claims attorney client privilege and/or protection under the attorney
9 work product doctrine.

10 8. Defendant is unaware of the existence of any documents responsive to this
11 request and is not able to comply.

12 9. Defendant is not aware of any such insurance policy and is not able to comply
13 with this request.

14 10. Defendant objects that the request is vague, ambiguous and overbroad.
15 Defendant further objects on the grounds that any such statement of a defendant
16 to the within action is privileged and protected by the attorney client privilege
17 and or attorney work product doctrine. Without waiving the privilege,
18 defendant is not aware of the existence of any statement that may have been
19 obtained from any party to this action relating to any of the incidents described
20 in the complaint.

21 11. Defendant objects that the question seeks the discovery of information
22 protected by the attorney client privilege and/or attorney work product doctrine.
23 Defendant further objects that the request is vague and ambiguous. Without
24 waiving the objections, this defendant is not in possession of any statements
25 responsive to the request other than his own, to which he claims attorney client
26 privilege and protection under the attorney work product doctrine.

27 12. Defendant objects that the request is vague, ambiguous, overbroad, burdensome
28 and oppressive. Defendant further objects that the request seeks the production

RESPONSE TO DEMAND FOR PRODUCTION OF DOCUMENTS AND THINGS

1 of documents such as payroll records that are privileged and protected by the
 2 defendant's right of privacy. Defendant further objects that the request seeks
 3 information that is neither relevant to any issue in this matter nor calculated to
 4 lead to the discovery of admissible evidence. Defendant is unable to comply
 5 with this request due to its vagueness, uncertainty and lack of specificity as to
 6 the nature of documents sought.

7 13. Defendant is unable to comply with the request because he is not aware that
 8 any such documents exist.

9 14. Defendant is unable to comply with the request because he is not in possession
 10 of any such documents.

11 15. Defendant objects to this demand on the grounds that it seeks the production of
 12 documents protected by the attorney client privilege and /or attorney work
 13 product doctrine. Defendant further objects that the grounds that the request,
 14 like the subject interrogatory is vague and ambiguous. Without waiving the
 15 objections, after a diligent search and reasonable inquiry, defendant responds
 16 that he is unaware of any unprivileged documents that may support these facts.
 17 Discovery is ongoing and defendant reserves the right to amend his response at
 18 any time.

19 16. Defendant objects to this demand on the grounds that it seeks the production of
 20 documents protected by the attorney client privilege and/or attorney work
 21 product doctrine. Defendant further objects on the grounds that the request, like
 22 the subject interrogatory is vague and ambiguous. Without waiving the
 23 objections, after a diligent search and a reasonable inquiry, defendant responds
 24 that he is unaware of any unprivileged documents that may support these facts.
 25 Discovery is ongoing and defendant reserves the right to amend his response at
 26 any time.

27 17. Defendant objects to this demand on the grounds that it seeks the production of
 28 documents protected by the attorney client privilege and/or attorney work

RESPONSE TO DEMAND FOR PRODUCTION OF DOCUMENTS AND THINGS

1 product doctrine. Defendant further objects that the request, like the subject
2 interrogatory is vague and ambiguous. Without waiving the objections, after a
3 diligent search and a reasonable inquiry, defendant responds that he is unaware
4 of any unprivileged documents that may support these facts. Discovery is
5 ongoing and defendant reserves the right to amend his response at any time.

6 18. Defendant objects to the demand on the grounds that it seeks the production of
7 documents protected by the attorney work product doctrine and that like the
8 subject interrogatory, it is vague and ambiguous. Without waiving the
9 objections, defendant is unable to comply because he is not aware of any
10 documents responsive to the demand.

11 19. Defendant objects to the demand on the grounds that it seeks the production of
12 documents protected by the attorney client privilege and or attorney work
13 product doctrine. Defendant further objects that the request like the subject
14 interrogatory is vague and ambiguous and that it likewise seeks the reports of
15 experts contrary to the provisions of the Code of Civil Procedure. Without
16 waiving the objections, the only report that defendant believes may exist would
17 be any possibly compiled by the Hughson Police Department, which defendant
18 does not presently possess.

19 20. Defendant did not provide a response to interrogatory 12.7 because none was
20 requested.

21 21. Defendant objects to the request because like the subject interrogatory it is
22 vague and ambiguous. Without waiving the objection, defendant is unable to
23 comply with this request because no such documents are known to exist.

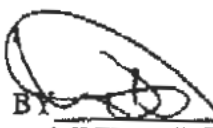
24 22. Defendant objects to the request because like the subject interrogatory it is
25 vague and ambiguous. Without waiving the objection, defendant is unable to
26 comply with request because no such documents are known to exist.

27 23. Refer to response to number 22, above.
28

RESPONSE TO DEMAND FOR PRODUCTION OF DOCUMENTS AND THINGS

- 1 24. Defendant objects to the request because like the subject interrogatory, it is
- 2 vague and ambiguous. With waiving the objection, defendant is unable to
- 3 comply with the request because no such documents are known to exist.
- 4 25. Defendant objects to the request because like the subject interrogatory it is
- 5 vague and ambiguous. Without waiving the objections, defendant is unable to
- 6 comply because no such documents are known to exist.
- 7 26. Defendant restates and incorporates herein to his request all objections set forth
- 8 in defendant's response to form interrogatory 15.1. Without waiving the
- 9 objections, after a diligent search and reasonable inquiry, defendant responds
- 10 that he is unaware of any unprivileged documents that support these facts.
- 11 Discovery is ongoing and defendant reserves the right to amend his response at
- 12 any time.

14 DATED 10/16/05

13 BY 
 14 MICHAEL D. COUGHLAN
 15 Attorney for Defendant, Fr. Francis Arakal
 16 Joseph

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 October 7, 2003, I served the within: **REPLY TO DEFENDANT'S FAILURE TO FILE OPPOSITION TO COMPEL PRODUCTION OF DOCUMENTS.**

X 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.

_____ 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.

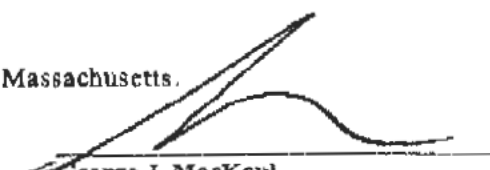
Paul N. Balestracci
Attorney at Law
Neumiller & Beardslee
509 West Weber Avenue
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Stockton, California 95203
(209) 948-8200
209-948-4910

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 October 7, 2003 at Falmouth, Massachusetts.


George J. MacKoul

Filed OCT 24 2003
JEANNE MILLSAPS
By Wayne Ellender CLERK
DEPUTY

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

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,

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

) Case No.: CV018440

) **PLAINTIFF'S REPLY TO DEFENDANT**
) **ARAKALS OPPOSITION TO**
) **PLAINTIFF'S MOTION TO COMPEL**
) **RESPONSES TO FORM**
) **INTERROGATORIES FROM**
) **DEFENDANT ARAKAL.**

1.

DEFENDANT HAS NOT PROVIDED *SUBSTANTIAL JUSTIFICATION* FOR ALL OF THE IMPROPER OBJECTIONS FILED AND CONTINUES TO ASSERT THE SAME IN HIS SUPPLEMENTAL RESPONSES FILED IN RESPONSE TO PLAINTIFF'S MOTION.

If a timely motion to compel has been filed, the burden is on the responding party to justify *any* objection or *failure fully to answer* the interrogatories. *Coy v. Sup.Ct. (Wolcher)* (1962) 58 Cal.2d 210, 220-221, 23 Cal.Rptr. 393, 398; *Fairmont Ins. Co. v. Sup.Ct. (Stendell)*

REPLY - 1

1 (2000) 22 Cal.4th 245, 255, 92 Cal.Rptr.2d 70, 77. (Emphasis added). Clearly the opposition
2 filed by the Defendant does neither.

3 The responding party, in a "futile" attempt to file supplemental responses files unverified
4 responses and no supporting declaration in support of his points and authorities. Case law is
5 clear: "Where a verification is required, an unverified response is ineffective; it is the
6 equivalent of no response at all. See *Appleton v. Sup. Ct. (Cook)* (1988) 206 Cal.App.3d 632,
7 636, 253 Cal.Rptr. 762, 764.

8 Further although Form Interrogatories 2.11, 12.2, 12.3, and 15.1 were the subject of
9 plaintiff's motion, defendant only addresses in his opposition Form Interrogatory 2.11. Then
10 the defendant re-files unverified responses with almost identical objections to the questions in
11 dispute, with out even attempting to justify the same. He also stands steadfast on filing general
12 objections to the entire set of form interrogatories, which is prohibited as a matter of law.
13 Objections to the entire set of interrogatories *will not be sustained* if any of the questions is
14 proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811.
15 (Emphasis added).

16 Finally, the law is clear it is not only the Defendant's duty to answer the form
17 interrogatories completely with out meaningless objections (which is why this motion is being
18 brought) but in his opposition he must (and fails) to explain clearly the grounds for each
19 objection or failure to answer fully. Clearly the court "must order" further responses (and strike
20 the objections) and impose monetary sanctions because defendant lacks and continues to lack
21 "substantial justification" for continuing to assert his client's position or circumstances, making
22 sanctions "justified."
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REPLY - 2

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II
**WITH RESPECT TO FORM INTERROGATORY 2.11, THE ENTIRE FOCUS OF
DEFENDANTS OPPOSITION, HE MISTATES THE LAW WITH REGARD TO HIS
ATTEMPT TO JUSTIFY HIS OBJECTIONS**

Defendant misstates the holding of the *West Pico Furniture* Case. The quote from the case cited by defendant in his opposition is missing certain key terms/phrases regarding the objection which the defendant attempts to justify. The case really says this:

“Moreover, even if it be conceded that the question does call for an opinion and conclusion, that fact, of itself, is not a proper objection to an interrogatory. Such objection may be proper when the answer is intended to have probative value, but it may not be utilized on discovery as a means of preventing a party from obtaining information that will lead him to probative facts *West Pico Furniture Co. v. Superior Court of Los Angeles County*, 56 Cal. 2d 407, 417 (Cal. 1961) (Emphasis added).

The questioned, Form Interrogatory 2.11 does ask for an opinion/conclusion. Defendant in his responses (both the original and unverified supplemental response which are identical) admits that “his most recent visit (which coincidentally was the visit where the alleged molestation took place) “was made to perform a blessing on the house” almost conceding the point that he was acting in his capacity as a priest for the defendant diocese of Stockton when he went into the house. In fact, when one looks even closer at this response it can be argued that, *it was upon the authority and/or color of his priestly authority*) that he was able to *gain entry into the house* to perform this trusted ritual. Defense counsel’s objection/desire to prevent his client from stating a definitive opinion as to whether or not Defendant was acting as a priest when he molested the plaintiff is a “smoke and mirrors” argument¹. The objection is being asserted as a means of preventing plaintiff from obtaining information that will lead plaintiff to probative

¹ This is even more evident when one examines the logic of defendant’s arguments. Throughout his moving papers he (and even in his verified request for admissions) denies that the molestation took place. Then why is defendant so threatened in admitting or denying that he was acting as an agent of Diocese on the day of the incident? The answer is clear, although defendant Arakal is represented by independent counsel, in principal his defense is being directed by the Diocese he is still currently employed by.

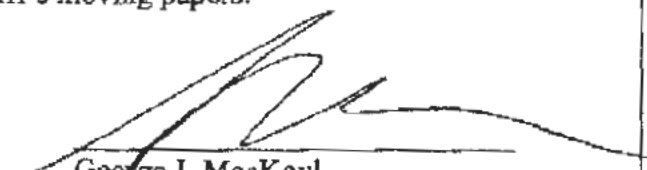
1 facts that the diocese knew or should have known that defendant used his position as a priest
2 to gain access to victims.

3 Therefore, the objection is not justified and the defendant should be ordered to answer the
4 interrogatory without objection.

5 **CONCLUSION**

6 Based on the foregoing plaintiff respectfully requests that his motion be granted and that
7 sanctions be granted in accordance with plaintiff's moving papers.

8
9 Dated: October 24, 2003

10 
11 George J. MacKoul
12 Attorney for 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 October 7, 2003, I served the within: **REPLY TO DEFENDANT'S OPPOSITION TO COMPEL FORM INTERROGATORY ANSWERS AND SUPPLEMENT SAME.**

 X 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.

 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.

Paul N. Balestracci
Attorney at Law
Neumiller & Beardslee
509 West Weber Avenue
Fifth Floor
Stockton, California 95203
(209) 948-8200
209-948-4910

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 October 7, 2003 at Falmouth, Massachusetts


George J. MacKoul

1 MICHAEL D. COUGHLAN (SB# 124398)
2 ATTORNEY AT LAW
3 3031 W. MARCH LANE, Ste. 210 WEST
4 STOCKTON, CA 95219
5 (209) 952-3878
6
7
8 Attorneys for Defendant, FR. FRANCIS ARAKAL JOSEPH

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN
OCT 20 PM 3:05
BY *[Signature]*
DEPUTY

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

10 —ooo0ooo—

10 KATHLEEN MACHADO, as an individual)
11 and as Guardian Ad Litem for RACHEL LOMAS)
12 and AMBER LOMAS,)
13 Plaintiffs,)
14 -vs-)
15 FR. JOSEPH ILLO, FR. FRANCIS JOSEPH)
16 aka FR. FRANCIS ARAKAL, FR. RICHARD)
17 RYAN, BISHOP STEVEN BLAIR and THE)
18 DIOCESE OF STOCKTON,)
19 Defendants.)

NO. CV018440
RESPONSE TO PLAINTIFF'S
MOTION TO COMPEL
RESPONSES TO REQUEST
FOR PRODUCTION OF
DOCUMENTS
Date: October 30, 2003
Dept: 42

20 —ooo0ooo—

21 Defendant FR. FRANCIS ARAKAL JOSEPH has amended his responses to plaintiff's
22 Request for Production of Documents, and hereby responds to plaintiff's Motion to Compel
23 Responses to Request for Production of Documents by providing the amended responses,
24 attached hereto.

25 Dated: October 20, 2003

By: *Alissa K. Harris for*
MICHAEL D. COUGHLAN,
Attorney for Defendant
Fr. Francis Arakal

26
27
28 RESPONSE TO PLAINTIFF'S MOTION
TO COMPEL RESPONSES TO REQUEST
FOR PRODUCTION OF DOCUMENTS

SCANNED

1 MICHAEL D. COUGHLAN (CSB #124398)
2 ATTORNEY AT LAW
3 3031 West March Lane, Suite 210 West
4 Stockton, CA 95219
5 (209) 952-3878

6 Attorneys for Defendant, FR. FRANCIS ARAKAL JOSEPH

7
8
9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

10 KATHLEEN MACHADO as an individual and)
11 as Guardian Ad Litem for RACHEL LOMAS)
12 and AMBER LOMAS)
13 Plaintiffs,)

Case No.: CV018440
AMENDED
RESPONSES TO REQUEST FOR
PRODUCTION OF DOCUMENTS

14 vs.

15 FR. JOSEPH ILLO, FR. FRANCIS JOSEPH aka)
16 FR. FRANCIS ARAKAL, FR. RICHARD)
17 RYAN, BISHOP STEVEN BLAIR and THE)
18 DIOCESE OF STOCKTON)
19 Defendants.

20 PROPOUNDING PARTY: Plaintiff, RACHEL LOMAS

21 RESPONDING PARTY: Defendant, FR. FRANCIS ARAKAL JOSEPH

22 SET NUMBER: ONE (1)

23 These responses to Request for Production of Documents are served pursuant to Code of Civil
24 Procedure section 2031. In answering these requests, the Propounding Party is being furnished
25 with such information as is presently available to this Responding Party, which may not be
26 entirely reliable since discovery is still continuing. Since discovery is still continuing and
27 information is still being ascertained, these responses may not be admissible in evidence. This
28 Responding Party expressly reserves the right to introduce at trial evidence and/or documents
that are presently unknown to this Responding Party and/or are discovered subsequent to the date

1 of these responses. Further, this Responding Party expressly reserves the right to amend these
2 responses without motion at any time, including up to and at the trial in this matter.

3 **GENERAL OBJECTION NUMBER 1**

4 THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS ON THE GROUNDS THAT
5 THIS RESPONDING PARTY HAS NOT YET FULLY COMPLETED THE
6 INVESTIGATION, DISCOVERY AND TRIAL PREPARATION IN THIS MATTER

7 This Responding Party has not yet fully completed the investigation of the facts relating to
8 this case, and has not completed discovery in this matter, nor completed preparation for trial.

9 All of the responses contained herein are based only upon such information and documents
10 that are presently available to and specifically known to this Responding Party at this time, and
11 discloses only those contentions that presently occur to this Responding Party. It is anticipated
12 that further discovery, independent investigation, legal research and analysis may supply
13 additional facts and add meaning to known facts; as well as establish new factual conclusions
14 and legal contentions, all of which may lead to substantial additions to, changes in, and
15 variations from the conclusions and contentions set forth herein.

16 The responses and objections set forth herein are given without prejudice to this Responding
17 Party's right to produce evidence on any subsequently discovered fact(s), or of fact(s) that this
18 Responding Party may later recall. Accordingly, this Responding Party expressly reserves the
19 right to change any and all responses contained herein as additional facts are ascertained,
20 analyses are made, legal research is completed and additional contentions are developed.

21 The responses contained herein are made in a good faith effort to supply as much factual
22 information and as much specification of legal contentions as is presently known, but should not,
23 in any way, be to the prejudice of this Responding Party in relation to further discovery,
24 research, analysis, or presentation of evidence at trial.

25 **GENERAL OBJECTION NUMBER 2**

26 THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS ON THE GROUNDS AND
27 TO THE EXTENT THAT THEY SEEK PRIVILEGED, CONFIDENTIAL AND
28 UNDISCOVERABLE INFORMATION THAT IS PROTECTED BY THE ATTORNEY-
CLIENT RELATIONSHIP AND/OR THE ATTORNEY WORK PRODUCT DOCTRINE

This Responding Party objects to these Requests to the extent that they seek privileged,
confidential and undiscoverable information that is absolutely and/or conditionally protected by
the attorney-client relationship and/or the attorney work product doctrine.

1 The responses contained herein are made in a good faith effort to supply as much factual
2 information and as much specification of legal contentions as is presently known, but should not,
3 in any way, be to the prejudice of this responding party, and to the extent that this responding
4 party discloses privileged or confidential information, if any, said disclosure shall not, in any
5 way, be deemed or construed to be a waiver of this Responding Party's right too invoke and
6 assert the attorney-client privilege and/or attorney work product doctrine.

7 **GENERAL OBJECTION NUMBER 3**

8 THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS ON THE GROUNDS AND
9 TO THE EXTENT THAT THE TERM "INCIDENT" USED THROUGHOUT IS VAGUE AS
10 TO WHICH SPECIFIC EVENT THE PROPOUNDING PARTY IS REFERRING

11 Plaintiff's complaint refers to alleged acts and omissions of various defendants, thereby
12 creating uncertainty and ambiguity as to the definition of the term "incident" as used throughout
13 these interrogatories.

14 **RESPONSE TO REQUEST FOR PRODUCTION (SET ONE)**

- 15
- 16 1. Responding party objects to the demand on the grounds that it seeks the
17 discovery of information that is neither relevant to any issue in this matter nor
18 reasonably calculated to lead to the discovery of admissible evidence. Without
19 waiving the objections, defendant is unable to comply with this request because
20 he is not of the existence of any such documents.
 - 21 2. Defendant objects to this request on the grounds that it seeks the discovery of
22 information protected by the defendant's right of privacy. Defendant further
23 objects that the demand is harassing and oppressive, an abuse of the discovery
24 process and that it seeks the discovery of information that is neither relevant to
25 any issue in this matter nor reasonably calculated to lead to the discovery of
26 admissible evidence.
 - 27 3. Defendant objects to this request on the grounds that it seeks privileged
28 information protected by the defendants right of privacy and the privacy and

1 religious freedom rights of third persons, not parties to this lawsuit. Defendant
2 further objects that the demand seeks information that is neither relevant to any
3 issue in this matter nor reasonably calculated to lead to the discovery of
4 admissible evidence. Without waiving the objections, defendant is unable to
5 comply with the request because he has no such personal diary or journal.

6 4. This responding defendant objects on the grounds that the request is vague and
7 ambiguous and that it seeks the production of privileged documents protected
8 by the defendant's right of privacy. Defendant further objects that the demand
9 is oppressive, harassing and seeks the discovery of information that is neither
10 relevant to any issue in this matter nor reasonably calculated to lead to the
11 discovery of admissible evidence. Without waiving the objections defendant is
12 unable to comply with this request because no such documents exist.

13 5. Defendant objects on the grounds that the request seeks the production of
14 privileged documents protected by the defendant's right of privacy and the
15 rights of privacy and/or religious freedom of other persons, not party to this
16 action to the extent that the calendar identifies other individuals. Defendant
17 further objects that the demand is overbroad and seeks the discovery of
18 information that is neither relevant to any issue in this matter nor reasonably
19 calculated to lead to the discovery of admissible evidence. Without waiving the
20 objections, after a diligent search and a reasonable inquiry defendant responds
21 that there are no notations in the subject calendar that in any way relate to the
22 plaintiffs in the subject action.

23 6. Defendant objects on the grounds that the request seeks the production of
24 documents that are privileged and protected by the defendant's right of privacy
25 and the rights of privacy and/or religious freedom of third persons, not party to
26 this action. Defendant further objects that the request is overbroad and seeks
27 the production of information that is neither relevant to any issue in this lawsuit
28 nor reasonably calculated to lead to the discovery of admissible evidence.

1 Defendant in not in the possession and or control of any such telephone bills,
2 which are the property of St. Joseph's Parish.

3 7. Defendant objects to this request on the grounds that the request seeks the
4 production of documents protected by the attorney client privilege and/or
5 attorney work product doctrine. Without waiving the objections, defendant is in
6 possession of his own memorandum written October 5, 2001 at the request of
7 counsel for the Diocese of Stockton in anticipation of litigation, to which
8 defendant claims attorney client privilege and/or protection under the attorney
9 work product doctrine.

10 8. Defendant is unaware of the existence of any documents responsive to this
11 request and is not able to comply.

12 9. Defendant is not aware of any such insurance policy and is not able to comply
13 with this request.

14 10. Defendant objects that the request is vague, ambiguous and overbroad.
15 Defendant further objects on the grounds that any such statement of a defendant
16 to the within action is privileged and protected by the attorney client privilege
17 and or attorney work product doctrine. Without waiving the privilege,
18 defendant is not aware of the existence of any statement that may have been
19 obtained from any party to this action relating to any of the incidents described
20 in the complaint.

21 11. Defendant objects that the question seeks the discovery of information
22 protected by the attorney client privilege and/or attorney work product doctrine.
23 Defendant further objects that the request is vague and ambiguous. Without
24 waiving the objections, this defendant is not in possession of any statements
25 responsive to the request other than his own, to which he claims attorney client
26 privilege and protection under the attorney work product doctrine.

27 12. Defendant objects that the request is vague, ambiguous, overbroad, burdensome
28 and oppressive. Defendant further objects that the request seeks the production

1 of documents such as payroll records that are privileged and protected by the
2 defendant's right of privacy. Defendant further objects that the request seeks
3 information that is neither relevant to any issue in this matter nor calculated to
4 lead to the discovery of admissible evidence. Defendant is unable to comply
5 with this request due to its vagueness, uncertainty and lack of specificity as to
6 the nature of documents sought.

7 13. Defendant is unable to comply with the request because he is not aware that
8 any such documents exist.

9 14. Defendant is unable to comply with the request because he is not in possession
10 of any such documents.

11 15. Defendant objects to this demand on the grounds that it seeks the production of
12 documents protected by the attorney client privilege and /or attorney work
13 product doctrine. Defendant further objects that the grounds that the request,
14 like the subject interrogatory is vague and ambiguous. Without waiving the
15 objections, after a diligent search and reasonable inquiry, defendant responds
16 that he is unaware of any unprivileged documents that may support these facts.
17 Discovery is ongoing and defendant reserves the right to amend his response at
18 any time.

19 16. Defendant objects to this demand on the grounds that it seeks the production of
20 documents protected by the attorney client privilege and/or attorney work
21 product doctrine. Defendant further objects on the grounds that the request, like
22 the subject interrogatory is vague and ambiguous. Without waiving the
23 objections, after a diligent search and a reasonable inquiry, defendant responds
24 that he is unaware of any unprivileged documents that may support these facts.
25 Discovery is ongoing and defendant reserves the right to amend his response at
26 any time.

27 17. Defendant objects to this demand on the grounds that it seeks the production of
28 documents protected by the attorney client privilege and/or attorney work

1 product doctrine. Defendant further objects that the request, like the subject
2 interrogatory is vague and ambiguous. Without waiving the objections, after a
3 diligent search and a reasonable inquiry, defendant responds that he is unaware
4 of any unprivileged documents that may support these facts. Discovery is
5 ongoing and defendant reserves the right to amend his response at any time.

6 18. Defendant objects to the demand on the grounds that it seeks the production of
7 documents protected by the attorney work product doctrine and that like the
8 subject interrogatory, it is vague and ambiguous. Without waiving the
9 objections, defendant is unable to comply because he is not aware of any
10 documents responsive to the demand.

11 19. Defendant objects to the demand on the grounds that it seeks the production of
12 documents protected by the attorney client privilege and or attorney work
13 product doctrine. Defendant further objects that the request like the subject
14 interrogatory is vague and ambiguous and that it likewise seeks the reports of
15 experts contrary to the provisions of the Code of Civil Procedure. Without
16 waiving the objections, the only report that defendant believes may exist would
17 be any possibly compiled by the Hughson Police Department, which defendant
18 does not presently possess.

19 20. Defendant did not provide a response to interrogatory 12.7 because none was
20 requested.


21 21. Defendant objects to the request because like the subject interrogatory it is
22 vague and ambiguous. Without waiving the objection, defendant is unable to
23 comply with this request because no such documents are known to exist.

24 22. Defendant objects to the request because like the subject interrogatory it is
25 vague and ambiguous. Without waiving the objection, defendant is unable to
26 comply with request because no such documents are known to exist.

27 23. Refer to response to number 22, above.
28

- 1 24. Defendant objects to the request because like the subject interrogatory, it is
2 vague and ambiguous. With waiving the objection, defendant is unable to
3 comply with the request because no such documents are known to exist.
- 4 25. Defendant objects to the request because like the subject interrogatory it is
5 vague and ambiguous. Without waiving the objections, defendant is unable to
6 comply because no such documents are known to exist.
- 7 26. Defendant restates and incorporates herein to his request all objections set forth
8 in defendant's response to form interrogatory 15.1. Without waiving the
9 objections, after a diligent search and reasonable inquiry, defendant responds
10 that he is unaware of any unprivileged documents that support these facts.
11 Discovery is ongoing and defendant reserves the right to amend his response at
12 any time.

13
14 DATED 10/16/05

15 BY 
16 MICHAEL D. COUGHLAN
17 Attorney for Defendant, Fr. Francis Arakal
18 Joseph
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1 PROOF OF SERVICE

2 I declare that:

3 I am employed in the City of Stockton, County of San Joaquin, State of California. I am
4 over the age of eighteen (18) years of age and not a party to the within action; my business
address is 3031 W. March Lane, Suite 210 West, Stockton, California 95219.

5 I am readily familiar with my business' practice for collection and processing of
6 correspondence for mailing with the United States Postal Service.

7 On October 20, 2003, I served the within RESPONSE TO PLAINTIFF'S MOTION TO
8 COMPEL RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS

9 on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed
10 envelope with postage thereon duly prepaid, in the United States mail at Stockton, California,
addressed as follows:

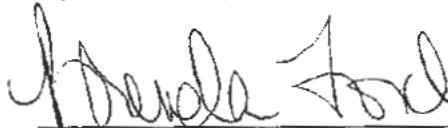
11 George J. MacKoul
12 SABBAH AND MACKOUL
13 49 Locust Street,
Falmouth, MASS 02540

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

16 Paul N. Balestracci
17 NUEMILLER & BEARDSLEE
18 P.O. Box 20
Stockton, CA 95201

19
20
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22
23
24 I declare under penalty of perjury that the foregoing is true and correct and that this
25 declaration was executed on October 20, 2003, at Stockton, California.

26
27 BRENDA FORD
Type or Print Name


Signature

1 MICHAEL D. COUGHLAN (SB# 124398)
2 ATTORNEY AT LAW
3 3031 W. MARCH LANE, Ste. 210 WEST
4 STOCKTON, CA 95219
5 (209) 952-3878
6
7
8 Attorneys for Defendant, FR. FRANCIS ARAKAL JOSEPH

FILED
CLERK OF SUPERIOR COURT
2003 OCT 20 PM 3:05
JUDICIAL BRANCH 42
[Handwritten signature]

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

—ooo0ooo—

10 KATHLEEN MACHADO, as an individual)
11 and as Guardian Ad Litem for RACHEL LOMAS)
12 and AMBER LOMAS,)
13 Plaintiffs,)
14 -vs-)
15 FR. JOSEPH ILLO, FR. FRANCIS JOSEPH)
16 aka FR. FRANCIS ARAKAL, FR. RICHARD)
17 RYAN, BISHOP STEVEN BLAIR and THE)
18 DIOCESE OF STOCKTON,)
19 Defendants.)

NO. CV018440
OPPOSITION TO PLAINTIFF'S
MOTION TO COMPEL
RESPONSES TO SPECIAL
INTERROGATORIES

Date: October 30, 2003
Dept: 42

INTRODUCTION

The underlying Complaint in this action is based upon unsubstantiated allegations that defendant Fr. Francis Arakal Joseph ("Arakal") sexually abused plaintiffs Rachel and Amber Lomas ("Lomas").

Plaintiffs have no evidence that Arakal has engaged in a pattern of sexual assault with children of the Diocese. In fact, a police investigation conducted in response to the incidents alleged in the Complaint found that the evidence in support of Lomas's allegations were insufficient to press charges against Arakal. If Arakal in fact has a criminal history, the police would have noted it, and Arakal would in all likelihood not be acting as a priest at this parish.

Still, plaintiffs have used the discovery process as a logic-defying fishing expedition in an

1 attempt to find "other minors who may have been molested by defendant but have not yet come
2 forward." Not only are plaintiff's Special Interrogatories irrelevant to Lomas's individualized
3 causes of action, which involve only conduct directed toward Lomas and which attempt to
4 vindicate only her rights, but they are grossly invasive of the privacy of Arakal and his
5 parishioners.

6 LEGAL ANALYSIS

7 Despite plaintiff's contentions, Arakal has responded to plaintiff's Special Interrogatories
8 to the best of his ability. To the extent that Arakal has not fully responded, his objections are
9 applicable and lawful.

10 Special Interrogatories Numbers 4, 9, 16, and 17 Attempt to Invade the 11 Associational Privacy of Parishioners.

12 In Special Interrogatories Numbers 4, 9, 16, and 17, plaintiff requests that Arakal reveal
13 the names and addresses of all minors he spoke with on the telephone in 2001, the names and
14 addresses of all minors who's homes Arakal blessed 3 months prior to the alleged incident, and
15 the names and addresses of all minors who's homes Arakal visited in 2001.

16 Litigants who are the recipients of discovery demands affecting the privacy rights of third
17 persons who are not parties to the litigation may assert the privacy rights of those persons.

18 *Denari v. Superior Court* (1989) 215 Cal.App.3d 1488, 1498-99. Arakal has properly asserted
19 the associational privacy rights of his parishioners in response to Special Interrogatories Numbers
20 4, 9, 16 and 17.

21 The right of associational privacy was articulated in *N.A.A.C.P. v. Alabama* (1958) 357
22 U.S. 449, 462, where the Court stated that "compelled disclosure of affiliation with groups . .
23 .may constitute [an] effective . . .restraint on freedom of association . . .This Court has
24 recognized the vital relationship between freedom to associate and privacy in one's associations."
25 In *Gibson v. Florida Legislative Comm.* (1963) 372 U.S. 539, 556, the Supreme Court declared
26 that "all legitimate organizations are the beneficiaries of these [privacy of association]
27 protections." The right to associate for the advancement of beliefs is protected whether the belief
28 sought to be advanced pertains to political, economic or religious matters. *N.A.A.C.P., supra*,

1 357 U.S. at 460-61.

2 In *Church of Hakeem, Inc. v. The Superior Court of Alameda County* (1980) 110
3 Cal.App.3d 384, the defendant, minister of the Church, sought relief from a discovery order
4 compelling him to disclose the names and addresses of all members of the Church of Hakeem to
5 plaintiffs, members of the Church, in order to determine the extent of defendant's alleged illegal
6 activities, including fraud and conspiracy. *Id.* At 389. The Court held that associational privacy
7 is applicable to lawsuits between private individuals, and that in order to prevail, a private
8 litigant must demonstrate a compelling state interest in the sought-after discovery. *Id.* At 388.

9 The plaintiffs argued that they had a compelling state interest for disclosure of
10 membership identities because they needed to determine the extent of the defendant's illegal
11 activities, and because there was evidence of violations by the defendant of federal and state
12 laws. *Id.* At 389-90. The Court disagreed, holding that there were many other methods by which
13 all, or substantially all, of the members of the Church who wished to be identified could in fact
14 be contacted. *Ibid.* The Court suggested advertisements in newspapers or simple word of mouth
15 in the community. *Ibid.*

16 The Court also held that the plaintiffs interest was not compelling enough to destroy the
17 anonymity of the Church members because "innocent, nonlitigant members are entitled to First
18 Amendment protection no matter what illegitimate activities may have been engaged in by the
19 church, its founder, or some few of its member-ministers." *Ibid.*

20 In this case, the minor members of Arakal's parish are entitled to associational privacy.
21 Plaintiff's alleged interest in finding other molested children is completely baseless, and is
22 therefore not compelling enough to disrupt the fundamental anonymity of the parish children. If
23 plaintiff wishes to discover the extent of Arakal's behavior, perhaps she can resort to some of the
24 measures suggested by the Court in *Court of Hakeem*. Arakal cannot, and will not, invade the
25 privacy of his parishioners by disclosing names and addresses of minor members.

26 **Special Interrogatories Numbers 1 and 8 Invaade the Privacy of Defendant Arakal.**

27 In Special Interrogatory Number 1, Lomas requests Arakal to disclose his personal and
28

1 professional telephone numbers used in 2001 which were allegedly used to “prey on minor
2 children”.

3 The Complaint sets forth allegations concerning sexual assault by Arakal upon Lomas
4 after having been invited to the Lomas home. There are no allegations in the Complaint that
5 Lomas was stalked or preyed upon over the telephone, which if true, would most certainly have
6 become part of the police investigation. The mere fact that Lomas has made baseless allegations
7 does not dissolve Arakal’s right to privacy, including disclosure of his telephone number, which
8 has no probative value to any issue in the case.

9 In addition, it is clear that the only reason Lomas wants Arakal’s telephone numbers is so
10 that phone records can be subpoenaed, and minor parishioners can be contacted, as part of
11 Lomas’s meritless fishing expedition. As discussed above, these minor parishioners have a right
12 to associational privacy, as well as a right not to be interrogated and harassed by Lomas’s
13 attorney.

14 If Lomas has a compelling reason for obtaining Arakal’s private telephone numbers, she
15 has yet to state it. Until she does, Arakal will not disclose his numbers without a guarantee that
16 they will not be used to harass and invade the privacy of his parishioners.

17 In Special Interrogatory Number 8, Lomas seeks to obtain Arakal’s Social Security
18 Number (“SSN”) in order to “check prior criminal and civil violations similar to those alleged in
19 this complaint.”

20 An individual’s SSN is highly private, and once disclosed has been identified as a major
21 component in the rising crime of identity theft. Arakal is not aware of any system that catalogues
22 criminal records or civil violations by SSN, nor of any discovery tool that would allow Lomas to
23 access such a system were one to exist. Lomas fails to specify what agency or mechanism she
24 would use to investigate Arakal by his SSN. Barring evidence of how and what Arakal’s SSN
25 would be used for, the danger of this private information floating around far outweighs any
26 probative value it may have.

27 Further, as explained above, there has been a police investigation conducted in this
28

1 matter. If Arakal indeed has a criminal history, as an alien he would be subject to arrest and
2 deportation, and would not be acting as a priest at this parish. Lomas's attempt to obtain
3 Arakal's SSN is nothing more than harassment and a further attempt to go fishing in an empty
4 pond.

5 **CONCLUSION**

6 For the reasons stated above, defendant respectfully requests that plaintiff's Motion to
7 Compel Responses to Special Interrogatories and request for sanctions be denied.

8
9
10 Dated: October 20, 2003

By: Alissa K. Harris for

11 MICHAEL D. COUGHLAN,
12 Attorney for Defendant
13 Fr. Francis Arakal
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27

1 MICHAEL D. COUGHLAN SBN 124398
2 ATTORNEY AT LAW
3 3031 W. MARCH LN., SUITE 210 WEST
4 STOCKTON, CA 95219
5 (209) 952-3878

6 Attorneys for Defendant, FR. FRANCIS ARAKAL JOSEPH

7
8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

9 KATHLEEN MACHADO as an individual)
10 and as Guardian Ad Litem for RACHEL)
11 LOMAS and AMBER LOMAS)

12 Plaintiffs)

13 vs.)

14 FR. JOSEPH ILLO, FR. FRANCIS JOSEPH,)
15 aka FR. FRANCIS ARAKAL, FR. RICHARD)
16 RYAN, BISHOP STEVEN BLAIR AND THE)
DIOCESE OF STOCKTON)

17 Defendants)

Case No. CV018440
AMENDED
RESPONSES TO SPECIAL
INTERROGATORIES

18
19 PROPOUNDING PARTY: Plaintiff, RACHEL LOMAS

20 RESPONDING PARTY: Defendant, FR. FRANCIS ARAKAL JOSEPH

21 SET NUMBER: One

22 These responses to special interrogatories are served pursuant to Code of Civil Procedure
23 section 2030. In answering these interrogatories, the Propounding Party is being furnished with
24 such information as is presently available to this Responding Party, which may not be entirely
25 reliable since discovery is still continuing. Since discovery is still continuing and information is
26

1 still being ascertained, these responses may not be admissible in evidence. This Responding
2 Party expressly reserves the right to introduce at trial evidence that is presently unknown to this
3 Responding Party and/or is discovered subsequent to the date of these responses. Further, this
4 Responding Party expressly reserves the right to amend these responses without motion at any
5 time, including up to and at the trial of this matter.

6 **GENERAL OBJECTION NUMBER 1**

7 THIS RESPONDING PARTY OBJECTS TO THESE INTERROGATORIES ON THE
8 GROUNDS THAT THIS RESPONDING PARTY HAS NOT YET FULLY COMPLETED THE
9 INVESTIGATION, DISCOVERY AND TRIAL PREPARATION IN THIS MATTER.

10 This Responding Party has not yet fully completed the investigation of the facts relating
11 to this case, and has not completed discovery in this matter, nor completed preparation for trial.

12 All of the responses contained herein are based only upon such information and
13 documents that are presently available to and specifically known to this Responding Party at this
14 time, and discloses only those contentions that presently occur to this Responding Party. It is
15 anticipated that further discovery, independent investigation, legal research and analysis may
16 supply additional facts and add meaning to known facts; as well as establish new factual
17 conclusions and legal contentions, all of which may lead to substantial additions to, changes in,
18 and variations from the conclusions and contentions set forth herein.

19 The responses and objections set forth herein are given without prejudice to this
20 Responding Party's right to produce evidence on any subsequently discovered fact(s), or of
21 fact(s) that this Responding Party may later recall. Accordingly, this Responding Party expressly
22 reserves the right to change any and all responses contained herein as additional facts are
23 ascertained, analysis are made, legal research is completed and additional contentions are
24 developed.

25 The responses contained herein are made in a good faith effort to supply as much factual
26 information and as much specification of legal contentions as is presently known, but should not,
in any way, be to the prejudice of this Responding Party in relation to further discovery,
research, analysis, or presentation of evidence at trial.

GENERAL OBJECTION NUMBER 2

1 THIS RESPONDING PARTY OBJECTS TO THESE INTERROGATORIES ON THE
2 GROUNDS AND TO THE EXTENT THAT THEY SEEK PRIVILEGED, CONFIDENTIAL
3 AND UNDISCOVERABLE INFORMATION THAT IS PROTECTED BY THE ATTORNEY-
CLIENT RELATIONSHIP AND/OR THE ATTORNEY WORK PRODUCT DOCTRINE.

4 This Responding Party objects to these interrogatories to the extent that they seek
5 privileged, confidential and undiscoverable information that is absolutely protected by the
6 attorney-client relationship and/or the attorney work product doctrine.

7 The Responses contained herein are made in a good faith effort to supply as much factual
8 information and as much specification of legal contentions as is presently known, but should not,
9 in any way, be to the prejudice of this Responding Party, and to the extent that this Responding
10 Party discloses privileged or confidential information, if any, said disclosure shall not, in any
11 way, be deemed or construed to be a waiver of this Responding Party's right to invoke and assert
the attorney-client privilege and/or attorney work product doctrine.

GENERAL OBJECTION NUMBER 3

12 THIS RESPONDING PARTY OBJECTS TO THESE INTERROGATORIES ON THE
13 GROUNDS AND TO THE EXTENT THAT THE TERM "INCIDENT" USED
14 THROUGHOUT IS VAGUE AS TO WHICH SPECIFIC EVENT THE PROPOUNING
15 PARTY IS REFERRING.

16 Plaintiff's complaint refers to alleged acts and omissions of various defendants, thereby
17 creating uncertainty and ambiguity as to the definition of the term "incident" as used throughout
18 these interrogatories.

RESPONSES TO SPECIAL INTERROGATORIES

- 19
- 20 1. This responding defendant objects to the question as calling for information that is
21 privileged and protected by the defendant's right of privacy. Responding defendant
22 further objects that the question is harassing, overbroad and calling for the discovery
23 of information that is neither relevant to any issue in this matter nor reasonably
24 calculated to lead to the discovery of admissible evidence.
25
26

- 1 2. This responding defendant objects to the question as calling for information that is
2 privileged and protected by the defendant's rights of privacy. Responding defendant
3 further objects that the question is harassing, overbroad and calling for the discovery
4 of information that is neither relevant to any issue in this matter nor reasonably
5 calculated to lead to the discovery of admissible evidence.
- 6 3. This responding defendant objects to the question as calling for information that is
7 privileged and protected by the defendant's right of privacy. Responding defendant
8 further objects that the question is harassing, overbroad and calling for the discovery
9 of information that is neither relevant to any issue in this matter nor reasonably
10 calculated to lead to the discovery of admissible evidence.
- 11 4. This responding defendant objects to the question as calling for information that is
12 privileged and protected by the defendant's right of privacy. Responding defendant
13 further objects that the question is harassing, overbroad and calling for the discovery
14 of information that is neither relevant to any issue in this matter nor reasonably
15 calculated to the discovery of admissible evidence.
- 16 5. This responding defendant objects to the question as vague, ambiguous, compound
17 and complex. Without waiving the objections, defendant responds Father Joseph Illo
18 and Paul Balestracci, the attorney for the Diocese of Stockton.
- 19 6. This responding defendant objects to the question as calling for information that is
20 privileged and protected by the defendant's right of privacy. Responding defendant
21 further objects that the question is harassing, overbroad and calling for the discovery
22 of information that is neither relevant to any issue in this matter nor reasonably
23 calculated to lead to the discovery of admissible evidence.
- 24 7. This responding defendant objects to the question as vague, ambiguous, overbroad,
25 burdensome, oppressive and calling for the identification of documents protected by
26 the attorney client privilege and/or attorney work product doctrine. Without waiving
the objections, this responding defendant provided a memorandum dated October 5,
2001 to defendant Diocese of Stockton. Defendant Diocese of Stockton has provided
responding defendant with copies of statements of St. Joseph's Parish staff members,
Jackie Tucker, Mary Mullins, Owen Kummerle, and Rosario Hernandez. Defendant
Diocese of Stockton has also provided this responding defendant with letters written

1 by plaintiff Kathleen Machado to Defendant Bishop Steven Blair, and letters written
2 by Defendants Bishop Steven Blair and Fr. Joseph Illo to plaintiff Kathleen Machado.

- 3 8. This responding defendant objects to the question as calling for information that is
4 privileged and protected by the defendant's right of privacy. Responding defendant
5 further objects that the question is harassing, overbroad and calling for the discovery
6 of information that is neither relevant to any issue in this matter nor calculated to lead
7 to the discovery of admissible evidence.
- 8 9. This responding defendant objects to the question on the grounds that it seeks to
9 obtain information in violation of the rights of privacy and/or religious freedom of
10 individuals, not party to this lawsuit. Responding defendant further objects that the
11 question is harassing, overbroad and calling for the discovery of information that is
12 neither relevant to any issue in this matter nor calculated to lead to the discovery of
13 admissible evidence.
- 14 10. Defendant is not aware of any such documents received from the Diocese of
15 Stockton.
- 16 11. This responding defendant objects that the question is vague, ambiguous and
17 overbroad. Without waiving the objection, defendant responds that he has visited
18 CCD classes and participated in the celebration of Mass with minor altar servers.
- 19 12. Responding defendant objects that the question is vague, ambiguous and
20 unintelligible. Without waiving the objections, while living in the United
21 States, defendant has served as a priest at St. Joseph's Parish in Modesto, California
22 and at St. Peter's Parish in Lemoore, California. While in India, defendant served as
23 a priest at Good Shepherd Church located in Kottayam, India.
- 24 13. St. Joseph's Pontifical Institute of Philosophy and Theology, Aluva, Kerala, India.
- 25 14. This responding defendant objects on the grounds that the question is vague and
26 ambiguous, without waiving the objections, Fr. Datus, who the defendant believes is
currently living in Redlands, California, Fr. Eric Sweringen, who defendant believes
is currently at Holy Spirit Church in Fresno, California, and Fr. Joseph Illo the pastor
of St. Joseph's Parish in Modesto.
15. This responding defendant objects on the grounds that he is not a canon lawyer and
that the question calls for an opinion and conclusion beyond his expertise. Defendant

1 further objects that the question improperly seeks the opinions of expert witnesses, is
2 argumentative, burdensome, and oppressive to the extent that it requires defendant to
3 perform research and a compilation of possibly applicable canon law.

4 16. This responding defendant objects to the question on the grounds that it seeks
5 information that is privileged and protected by the privacy rights of the defendant and
6 the privacy and/or religious freedom rights of persons not party to this lawsuit.

7 Defendant further objects that the question is overbroad, harassing and oppressive and
8 seeks the discovery of information that is neither relevant to any issue in this matter
9 nor calculated to lead to the discovery of admissible evidence.

10 17. Defendant objects to the question on the grounds that it seeks information that is
11 privileged and protected by the defendant's right of privacy and the privacy and/or
12 religious freedom rights of persons not party to this lawsuit. Defendant further objects
13 that the question is overbroad, harassing and oppressive, and seeks the discovery of
14 information that is neither relevant to any issue in this matter nor calculated to lead to
15 the discovery of admissible evidence.

16 18. Defendant objects on the grounds that the question seeks the discovery of information
17 protected by the attorney client privilege and/or attorney work product doctrine.
18 Defendant further objects that the question is vague and ambiguous. Without waiving
19 the objections, defendant spoke with Monsignor Ryan and Bishop Blair.

20 19. Responding defendant objects to the question on the grounds that it seeks privileged
21 information protected by the defendant's right of privacy. Defendant further objects
22 that the question is harassing, oppressive and seeks the discovery of information that
23 is neither relevant to any issue in this matter nor calculated to lead to the discovery of
24 admissible evidence. Without waiving the objections, none.

25 DATED: 10/16/20

26 BY 

MICHAEL D. COUGHLAN
ATTORNEYS FOR DEFENDANT,
FR. FRANCIS ARAKAL JOSEPH

1 PROOF OF SERVICE

2 I declare that:

3 I am employed in the City of Stockton, County of San Joaquin, State of California. I am
4 over the age of eighteen (18) years of age and not a party to the within action; my business
address is 3031 W. March Lane, Suite 210 West, Stockton, California 95219.

5 I am readily familiar with my business' practice for collection and processing of
6 correspondence for mailing with the United States Postal Service.

7 On October 20, 2003, I served the within OPPOSITION TO PLAINTIFF'S MOTION
TO COMPEL RESPONSES TO SPECIAL INTERROGATORIES

8 _____
9 on the interested parties in said cause, by placing a true copy thereof enclosed in a sealed
10 envelope with postage thereon duly prepaid, in the United States mail at Stockton, California,
addressed as follows:


11 George J. MacKoul
12 SABBAH AND MACKOUL
13 49 Locust Street,
Falmouth, MASS 02540

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

16 Paul N. Balestracci
17 NUEMILLER & BEARDSLEE
18 P.O. Box 20
Stockton, CA 95201

19
20
21
22
23
24 I declare under penalty of perjury that the foregoing is true and correct and that this
25 declaration was executed on October 20, 2003, at Stockton, California.

26
27 BRENDA FORD
Type or Print Name

28 
Signature

1 Defendant in not in the possession and or control of any such telephone bills,
2 which are the property of St. Joseph's Parish.

3 7. Defendant objects to this request on the grounds that the request seeks the
4 production of documents protected by the attorney client privilege and/or
5 attorney work product doctrine. The only such document responsive to the
6 demand in defendant's possession and/or control is a memorandum written by
7 defendant, dated October 5, 2001 following the incident of September 11,
8 2001, to which defendant claims attorney client privilege and/or protection
9 under the attorney work product doctrine.

10 8. Defendant is unaware of the existence of any documents responsive to this
11 request and is not able to comply.

12 9. Defendant is not aware of any such insurance policy and is not able to comply
13 with this request.

14 10. Defendant objects that the request is vague, ambiguous and overbroad.

15 Defendant further objects on the grounds that any such statement of a defendant
16 to the within action is privileged and protected by the attorney client privilege
17 and or attorney work product doctrine. Without waiving the privilege,
18 defendant is not aware of the existence of any statement that may have been
19 obtained from any party to this action relating to any of the incidents described
20 in the complaint other than his own memorandum of October 5, 2001, to which
21 he claims attorney client privilege and/or protection by the attorney work
22 product doctrine and letters of plaintiff Kathleen Machado dated January 9,
23 2002, February 20, 2002 and March 26, 2002, copies of which are produced.

24 11. Defendant objects that the question seeks the discovery of information
25 protected by the attorney client privilege and/or attorney work product doctrine.
26 Defendant further objects that the request is vague and ambiguous. Without
27 waiving the objections, defendant is in possession of his own memorandum of
28 October 5, 2001, to which he claims attorney client privilege and/or protection

1 under the attorney work product doctrine and copies of statements made by St.
2 Joseph's Parish staff employees Jackie Tucker, Mary Mullins, Owen
3 Kummerle, Rosario Hernandez.

4 12. Defendant objects that the request is vague, ambiguous, overbroad, burdensome
5 and oppressive. Defendant further objects that the request seeks the production
6 of documents such as payroll records that are privileged and protected by the
7 defendant's right of privacy. Defendant further objects that the request seeks
8 information that is neither relevant to any issue in this matter nor calculated to
9 lead to the discovery of admissible evidence. Defendant is unable to comply
10 with this request due to its vagueness, uncertainty and lack of specificity as to
11 the nature of documents sought.

12 13. Defendant is unable to comply with the request because he is not aware that
13 any such documents exist.

14 14. Defendant is unable to comply with the request because he is not in possession
15 of any such documents.

16 15. Defendant objects to this demand on the grounds that it seeks the production of
17 documents protected by the attorney client privilege and /or attorney work
18 product doctrine. Defendant further objects that the grounds that the request,
19 like the subject interrogatory is vague and ambiguous. Without waiving the
20 objections, defendant is in possession of his own memorandum of October 5,
21 2001 to which he claims attorney client privilege and or protection under the
22 attorney work product doctrine and copies of statements of St. Joseph's Parish
23 staff members, Jackie Tucker, Mary Mullins, Rosario Hernandez and Owen
24 Kummerle to which he claims protection under the attorney work product
25 doctrine.

26 16. Defendant objects to this demand on the grounds that it seeks the production of
27 documents protected by the attorney client privilege and/or attorney work
28 product doctrine. Defendant further objects on the grounds that the request, like

1 the subject interrogatory is vague and ambiguous. Without waiving the
2 objections, defendant is in possession of his own memorandum of Oct
3 2001, to which he asserts the attorney client privilege and/or attorney w
4 product doctrine and statements of St. Joseph's Parish staff members J
5 Tucker, Mary Mullins, Rosario Hernandez and Owen Kummerle to wh
6 claims protection under the attorney work product doctrine.

7 17. Defendant objects to this demand on the grounds that it seeks the produ
8 documents protected by the attorney client privilege and/or attorney w
9 product doctrine. Defendant further objects that the request, like the su
10 interrogatory is vague and ambiguous. Without waiving the objection
11 defendant is in possession of his own memorandum of October 5, 200
12 which he claims protection under the attorney client privilege and/or at
13 work product doctrine and statements of St. Joseph's Parish staff mem
14 Jackie Tucker, Mary Mullins, Rosario Hernandez and Owen Kummer
15 which he claims protection under the attorney work product doctrine.

16 18. Defendant objects to the demand on the grounds that it seeks the produ
17 documents protected by the attorney work product doctrine and that li
18 subject interrogatory, it is vague and ambiguous. Without waiving the
19 objections, defendant is unable to comply because he is not aware of a
20 documents responsive to the demand.

21 19. Defendant objects to the demand on the grounds that it seeks the produ
22 documents protected by the attorney client privilege and or attorney w
23 product doctrine. Defendant further objects that the request like the su
24 interrogatory is vague and ambiguous and that it likewise seeks the ren
25 experts contrary to the provisions of the Code of Civil Procedure. With
26 waiving the objections, the only reports that defendant believes may e
27 would be those possibly compiled by the Hughson Police Department
28

1 canon lawyers of The Diocese of Stockton, neither of which are in the
2 possession and/or control of this responding defendant.

3 20. Defendant did not provide a response to interrogatory 12.7 because none was
4 requested.

5 21. Defendant objects to the request because, like the subject interrogatory, it is
6 vague and ambiguous. Without waiving the objection, defendant is unable to
7 comply with this request because no such documents are known to exist.

8 22. Defendant objects to the request, because like the subject interrogatory, it is
9 vague and ambiguous. Without waiving the objection, defendant is unable to
10 comply with request because no such documents are known to exist.

11 23. Refer to response to number 22, above.

12 24. Defendant objects to the request because like the subject interrogatory, it is
13 vague and ambiguous. With waiving the objection, defendant is unable to
14 comply with the request because no such documents are known to exist.

15 25. Defendant objects to the request because, like the subject interrogatory, it is
16 vague and ambiguous. Without waiving the objections, defendant is unable to
17 comply because no such documents are known to exist.

18 26. Defendant restates and incorporates herein by reference all objections set forth
19 in defendant's response to form interrogatory 15.1. Defendant has not
20 conducted discovery and presently is not in possession of any documents
21 responsive to this demand.

22
23 As to objections only.

24
25 DATED 7/6/09

COUGHLAN & O'ROURKE, LLP

26
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28 BY  _____

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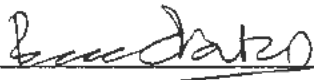
VERIFICATION
(CCP 446, 2015.5)

I, declare that:

I am a party to the above-entitled action. I have read the foregoing Defendant's Responses to Plaintiff's Requests For Production of Documents, Set One, and know the contents thereof; the same is true of my own knowledge, except as to those matters, which are stated upon my information or belief, and as to those matters, I believe them to be true.

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

Dated 02.06.03



1 PROOF OF SERVICE BY MAIL
2 CCP SECTION 1013(a)(3)

3 STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN

4 I am employed in the County of San Joaquin, State of California.
5 I am over the age of 18 years and not a party to the within action.
6 My business address is 3031 W. March Lane, Suite 210 West, Stockton,
California 95219.

7 On February 7, 2003, I served the attached:
8 Responses of Defendant Fr. Francis Arakal Joseph to Plaintiff's Requests for Production of Documents,
Set One

9 [X] By placing true copies thereof enclosed in a sealed envelope with postage thereon
10 fully prepaid, addressed as follows:

11 George J. MacKoul, Esq.

12 Sabbah & MacKoul

13 49 Locust Street

14 Falmouth, MA 02540

15 Anthony Boskovich, Esq.

16 Law Offices of Anthony Boscovich

17 28 N. First Street, 6th Floor

18 San Jose, CA 95113

19 Paul N. Balestracci, Esq.

20 Nuemiller & Beardslee

21 P.O. Box 20

22 Stockton, CA 95201

23 BY MAIL:

24 [x] I caused such envelope to be deposited in the mail at
25 Stockton, California. I am readily familiar with the firm's
26 practice for the collection and processing of
27 correspondence for mailing. It is deposited with the U.S.
28 Postal Service on the same day in the ordinary course of
business.

[] I deposited such envelope in the mail at Stockton,
California.

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

Executed on February 7, 2003, at Stockton, California.

27 
28 Mary L. Coughlan

EXHIBIT C

SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

49 Locust Street
Falmouth, Massachusetts 02540

508-495-4955
Fax: 508-495-4115
E-mail: sabbahmackoul.com

4255 Main Street
Riverside, California 92501
909-682-2021
Fax: 909-682-7341

355 West Las Palmas Avenue
Patterson, California 95363
209-892-2233
Fax: 209-892-2572

Park Place East
348 Park Street, Suite 106
North Reading, Massachusetts 01864
978-664-9944
Fax: 978-664-0820

COPY

Please reply to: FALMOUTH OFFICE

May 23, 2003

File no. MachadoC/CA02-0001

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

VIA FACIMILE AND U.S. MAIL

Re: Lomas v. Diocese of Stockton, et. al

Pursuant to our on going efforts to meet and confer on written discovery issues, please allow this letter to serve as another invitation for you to meet and confer with respect to your answers to our client, Rachel Lomas' first request for production of documents, set no. 1., responded by you on behalf of your client on 2/6/03.

Standards of professionalism govern production of documents in civil discovery in California. A responding party must not hide behind frivolous objections in order to avoid disclosure of the documents requested. "In responding to document demands, counsel should not strain to interpret the request in an artificially restrictive manner in order to avoid disclosure" and "Documents should only be withheld on the grounds of privilege only where appropriate". (*See Weil and Brown, Civil Procedure Before Trial*, supra at 8:1476.5 citing local court rules as an example of the level of professionalism that must be shown by a party in answering the production request of an adverse party).

Indeed the code is quite explicit in how a party must answer responses to an adverse party's production request. A party responding to a C.C.P. 2031 demand must respond separately to each requested with one of the following responses.

EXHIBIT ¹

C

1. An agreement to comply

2. A response stating an inability to comply which shall state the following (C.C.P. 2031 (f) (2) emphasis added)

* That a diligent search and reasonable inquiry has been made in an effort to locate the item demanded; and

* The reason the party is unable to comply is because the document:

-never existed; or

-has been lost or stolen; or

-is not in the possession, custody or control of the responding party ...in which case, the response **must state** the name and address of anyone believed to have the documents [C.C.P. 2031 (f) (2)]

3. The responding party may object to any item or category demanded in whole or in party, however to be effective the objection must also:

***IDENTIFY WITH PARTICULARITY THE SPECIFIC DOCUMENT OR DOCUMENTS OBJECTED TO: AND**

*Set forth the specific ground for objection, including claims of privilege or work product protection. See *Standon Co., Inc v. Superior Court* (1990) 225 CA 3d 898, 901

The responding party must not simply state objections without good reason and objections should not be filed without identification of the documents sought to be protected; i.e. a privilege log must be provided, identifying each request objected to. A blanket objection (e.g., "attorney-client privilege") may not always be enough to preserve the point. You must furnish sufficient information regarding the communication or conversation to enable a judge to rule on a motion to compel; e.g., the person to whom and by whom the communication was made, the date and place, nature or title of any document, etc.

The code specifically requires that your client respond in the manner mentioned above so as to prevent "surprise" productions of documents at or just before the time of trial. Full disclosure, at a minimum, of the identity of documents held by adverse parties allows discovery to be open and fair.

More specifically, your client's responses to our client's request for production of documents are incomplete and must be supplemented for the following reasons:

General Objection No 1: (Summarized) "The Responding Party Has Not Fully Completed Their Investigation, Discovery and Trial Preparation of This Matter".

Response to General Objection No. 1: As stated above, the law imposes a duty on you and your client to conduct an investigation and fully discover all known facts in response to the questions asked. While we understand that discovery is an ongoing process, it does not relieve you or your client from your duty to disclose all information known to date and your duty to fully investigate the allegations stated in the complaint. The police investigated your client in May of 2002, almost one year ago regarding the allegations stated in the complaint. The lawsuit in this matter was filed in September of last year. Certainly enough time has been available to complete a reasonable if not thorough investigation of the facts so alleged in the complaint. We object to this objection as being inappropriate as it must be stated in each and every response, and does not relieve you or your client of your obligation under the code to answer each and every request to the fullest extent possible at the time they are responded to.

If you disagree with our analysis I would be happy to look at any authority to the contrary if you could provide me with the authority when we meet and confer on this issue. Otherwise please withdraw this general objection in a supplemental response to these requests.

General Objection No. 2: (Summarized) "The Responding Party Objects to all the Request to The Extent That They Seek Privileged, Confidential and Undiscoverable Information That is Protected By the Attorney-Client Relationship and/or The Attorney Work Product Doctrine"

Response to General Objection No. 2: As I understand it your position is all the request stated by the way they are phrased and/or interpreted by you invade the attorney client privilege and the attorney work product doctrine? If so please provide the legal authority to support this blanket objection.

If you disagree with our analysis I would be happy to look at any authority to the contrary if you could provide me with the authority when we meet and confer on this issue. Otherwise please withdraw this general objection in a supplemental response to these requests.

General Objection No. 3: “THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS ON THE GROUNDS AND TO THE EXTENT THAT THE TERM “INCIDENT” USED THROUGHOUT IS VAGUE AS TO WHICH SPECIFIC EVENT THE PROPOUNDING PARTY IS REFERRING”

Response to General Objection No. 3: This objection is rather puzzling. I believe the complaint is clear as to the allegations directed towards your client. We alleged that on various occasions that he committed sexual acts against the minor plaintiffs. Certainly your responses to the 12.0 et. Seq. Interrogatories evidence a keen understanding of the incidents alleged against your client in the complaint.

I would be happy to discuss and clarify with you further which allegations stated in the complaint apply to each and every one of the requests stated. This would hopefully allow you to provide clearer supplemental responses. Perhaps we can discuss this in more detail when we meet and confer on this issue.

Above and beyond these general objections, each of the following responses to the following request for production and their accompanying objections are also insufficient for the following reasons:

(NOTE; MOST OF THE OBJECTIONS STATED WERE IN BOILERPLATE LANGUAGE)

Request No. 5: A copy of your personal calendar/date book for the year 2001

RESPONSE TO REQUEST FOR PRODUCTION NO. (5)

Defendant objects on the grounds that the request seeks the production of privileged documents protected by the defendant’s right of privacy and the rights of privacy and religious freedom of other person, not a party to this action the extent that the calendar identifies other individuals. Defendant further objects that the demand is overbroad and seeks the discovery of information that is neither relevant to any issue in this matter nor reasonably calculated to lead to the discovery of admissible evidence. Without waiving the objections, defendant will produce any notations in the subject calendar that specifically relate to the plaintiffs in this action, assuming that any such notations exist. Defendant will redact any references not related to the plaintiffs.

REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:

The objections do not comply with the requirements of C.C.P. 2031 (f) (2). Legal authority, which I would be happy to review, does not support the objections based on privacy and religious freedom. Further the response on its face, admits that a reasonable search and diligent effort was not made as the term “assuming any such notations exist”, is akin to no response at all. The request is relevant because the item requested may lead to discovery of other abuse victims.

REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7:

All documents in YOUR possession, custody and control, evidencing communications between YOU and any of the other named defendants, of and concerning any of the allegations stated in plaintiffs' complaint.

RESPONSE TO REQUEST FOR PRODUCTION NO. (7)

Defendant objects to this request on the grounds that the request seeks the production of documents protected by the attorney client privilege and/or attorney work product doctrine. The only such documents responsive to the demand in defendant's possession and/or control is a memorandum written by defendant, dated October 5, 2001 following the incident of September 11, 2001, to which defendant claims attorney client privilege and or protection under the attorney work product doctrine.

REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:

The responding party does not clarify how the statement was obtained. If it was the personal notes of the defendant, not drafted in anticipation of litigation, and the memorandum was not communicated directly to counsel then the privilege would not apply. Further since the request specifically asks for statements made to other defendants then the memorandum was transmitted to the other named defendants, placing it outside the rubric of the attorney client privilege. I believe we are entitled to have a copy of this memorandum. Obviously if it exonerates your client and/or reveals the names of other witnesses it is clearly discoverable and should be disclosed. We urge you to reconsider your objections.

REQUEST FOR PRODUCTION NO. 15:

Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR RESPONSES TO PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.1.

RESPONSE TO REQUEST FOR PRODUCTION NO. (15):

Defendant objects to this demand on the grounds that it seeks the production of documents protected by the attorney client privilege and/or attorney work product doctrine Defendant further object that the grounds that the request, like the subject interrogatory is vague and ambiguous. Without waiving the objections, defendant is in possession of his own memorandum of October 5, 2001 to which he claims attorney client privilege and or protection under the attorney work product doctrine and copies of statements of St. Joseph's Parish staff members, Jackie Tucker, Mary Mullins, Rosario Hernandez and Owen Kummerle to which he claims protection under the attorney work product doctrine.

REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:

As I understand it, you do not represent *St. Joseph's Parish staff members, Jackie Tucker, Mary Mullins, Rosario Hernandez and Owen Kummerle*. The Discovery Act refers only to the "work product" of attorneys acting on a client's behalf. Ca Civ Pro § 2018(a). Therefore you have no authority to claim attorney work product privilege with respect to individuals whom you do not represent. In addition, any attorney client privilege is also baseless. We urge you to reconsider your objections and produce the documents requested. Finally, and as stated previously, the form interrogatory referred to in this request are not vague and ambiguous.

REQUEST FOR PRODUCTION NO'S 16 & 17:

The objections stated by you are similar to the ones stated in response to request no. 15, and the objections thereto are also improper.

REQUEST FOR PRODUCTION NO. 26:

Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR RESPONSES TO PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 15.1.

RESPONSE TO REQUEST FOR PRODUCTION NO. 26:

Defendant restates and incorporates herein by reference all objections set forth in defendant's response to form interrogatory 15.1. Defendant has not conducted discovery and presently is not in possession of any documents responsive to this demand.

REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:

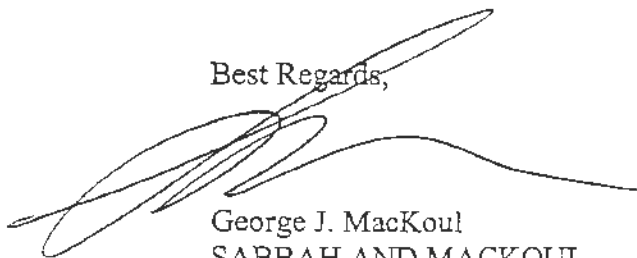
The response is not appropriate. As so stated in our March 20 Meet and Confer letter, you have a duty to verify all evidence to support you affirmative defenses stated in your complaint.

Your responses to these requests for production of documents are invalid and not supported by the law in California. We urge you to meet and confer regarding the issues stated in this letter as soon as possible. We require a written response to this letter, addressing each and every issue set forth above.

We hope that you will meet and confer on these issues, so as to avoid a motion to compel further production of documents and supplemental responses. We do not want to utilize the precious resources of the court, and believe that once you have reviewed this letter and the law stated herein that you would agree to withdraw your objections.

If you have any questions, I can be reached at our Falmouth Offices listed above.

Best Regards,

A handwritten signature in black ink, appearing to read 'George J. MacKoul', written over the typed name below.

George J. MacKoul
SABBAH AND MACKOUL

GJM

EXHIBIT D

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March 25, 2003

VIA FAX ONLY 508-495-4115


George J. MacKoul, Esq.
Sabbah & MaKoul
49 Locust Street
Falmouth, MA 02540

RE: *Lomas v Diocese of Stockton*

Dear Mr. MacKoul:

This is to confirm our agreement to an open ended extension within which you may bring a motion to compel further responses to my client's discovery responses served February 7, 2003. Although I am hopeful that our attempts at an informal resolution of this dispute over discovery will be successful, if they are not, this is to further confirm that we will mutually agree on a reasonable time limit for bringing of your motion to compel further responses.

Very truly yours,
Coughlan & O'Rourke LLP



Michael D. Coughlan

EXHIBIT D

1 The responses contained herein are made in a good faith effort to supply as much factual
2 information and as much specification of legal contentions as is presently known, but should not,
3 in any way, be to the prejudice of this responding party, and to the extent that this responding
4 party discloses privileged or confidential information, if any, said disclosure shall not, in any
5 way, be deemed or construed to be a waiver of this Responding Party's right to invoke and
6 assert the attorney-client privilege and/or attorney work product doctrine.

7 **GENERAL OBJECTION NUMBER 3**

8 THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS ON THE GROUNDS AND
9 TO THE EXTENT THAT THE TERM "INCIDENT" USED THROUGHOUT IS VAGUE AS
10 TO WHICH SPECIFIC EVENT THE PROPOUNDING PARTY IS REFERRING

11 Plaintiff's complaint refers to alleged acts and omissions of various defendants, thereby
12 creating uncertainty and ambiguity as to the definition of the term "incident" as used throughout
13 these interrogatories.

14 **RESPONSE TO REQUEST FOR PRODUCTION (SET ONE)**

- 15
- 16
- 17 1. Responding party objects to the demand on the grounds that it seeks the
18 discovery of information that is neither relevant to any issue in this matter nor
19 reasonably calculated to lead to the discovery of admissible evidence. Without
20 waiving the objections, defendant is unable to comply with this request because
21 he is not aware of the existence of any such documents.
- 22 2. Defendant objects to this request on the grounds that it seeks the discovery of
23 information protected by the defendant's right of privacy. Defendant further
24 objects that the demand is harassing and oppressive, an abuse of the discovery
25 process and that it seeks the discovery of information that is neither relevant to
26 any issue in this matter nor reasonably calculated to lead to the discovery of
27 admissible evidence.
- 28 3. Defendant objects to this request on the grounds that it seeks privileged
information protected by the defendant's right of privacy and the privacy and

1 religious freedom rights of third persons, not parties to this lawsuit. Defendant
2 further objects that the demand seeks information that is neither relevant to any
3 issue in this matter nor reasonably calculated to lead to the discovery of
4 admissible evidence. Without waiving the objections, defendant is unable to
5 comply with the request because he has no such personal diary or journal.

6 4. This responding defendant objects on the grounds that the request is vague and
7 ambiguous and that it seeks the production of privileged documents protected
8 by the defendant's right of privacy. Defendant further objects that the demand
9 is oppressive, harassing and seeks the discovery of information that is neither
10 relevant to any issue in this matter nor reasonably calculated to lead to the
11 discovery of admissible evidence. Without waiving the objections defendant is
12 unable to comply with this request because no such documents exist.

13 5. Defendant objects on the grounds that the request seeks the production of
14 privileged documents protected by the defendant's right of privacy and the
15 rights of privacy and/or religious freedom of other persons, not party to this
16 action to the extent that the calendar identifies other individuals. Defendant
17 further objects that the demand is overbroad and seeks the discovery of
18 information that is neither relevant to any issue in this matter nor reasonably
19 calculated to lead to the discovery of admissible evidence. Without waiving the
20 objections, defendant will produce any notations in the subject calendar that
21 specifically relate to the plaintiffs in this action, assuming that any such
22 notations exist. Defendant will redact any reference not related to the plaintiffs.

23 6. Defendant objects on the grounds that the request seeks the production of
24 documents that are privileged and protected by the defendant's right of privacy
25 and the rights of privacy and/or religious freedom of third persons, not party to
26 this action. Defendant further objects that the request is overbroad and seeks
27 the production of information that is neither relevant to any issue in this lawsuit
28 nor reasonably calculated to lead to the discovery of admissible evidence.