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Please reply to: FALMOUTH OFFICE

March 20, 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

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

Dear Mr. Coughlan:

I have recently received reviewed discovery responses to our client's discovery requests concerning the above-entitled matter mailed to this office from California on February 7, 2003. The responses propounded by your clients are inadequate and deficient under the code and I am requesting that your office meet and confer regarding the issues set forth in this letter.

As you know, the code requires that a party who responds to interrogatories must fulfill two separate and distinct duties, when providing responses an opposing party.

The first duty is the *duty to obtain information*. "If the responding party does not personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but *shall make a reasonable effort to obtain information* by inquiry to other natural persons or organizations, except where that information is equally available to the propounding party" C.C.P. Section 2030 (f) (1) (emphasis added), also see *Deyo v. Kilbourne* (1979) 84 CA 3d 771, 783). In fulfilling a party's duty to "obtain

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information”, case law is specific: *A party must obtain information from sources under the parties control.* “A party cannot plead ignorance to information which can be obtained from sources under his control” *Weil and Brown, Civil Procedure Before Trial*, supra at Section 8:1054, citing *Deyo v. Kilbourne*, supra at 782.

The second duty a responding party has is the “*duty to provide complete answers*”. Each answer given in a parties response must be “as complete and straightforward as the information reasonably available to the responding party permits. *If an interrogatory cannot be answered completely, it shall be answered to the extent possible.*” C.C. P. 2030 (f) (1) (emphasis added). Evasive answers are contrary to the rule of law, and are therefore improper. “An answer which supplies only part of the information requested is insufficient.” See, *Weil and Brown, Civil Procedure Before Trial*, supra, Section 8:1048. “*Nor may a party, by deftly-worded conclusion answers, evade a series of explicit questions.*” See, *Deyo v. Kilbourne*, supra at 771, 783 (emphasis added). “Interrogatories should not be read by the recipient in an artificial manner designed to assure that answers are not truly responsive” See, *Weil and Brown, Civil Procedure Before Trial*, supra at Section 8:1048. “*Parties must state the truth, and nothing but the truth in answering written interrogatories.*” See, *Union Bank v. Superior Court* (1995) 31 CA 4<sup>th</sup> 573, 580 (emphasis added).

More specifically, your client’s answers to the following interrogatories have breach one or more of the above stated duties for the following reasons:

### DEFENDANT FR. FRANCIS ARAKAL’S RESPONSES TO FORM INTERROGATORIES, SET ONE

**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 know 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 of or your client of your obligation under the code to answer each and every interrogatory to the fullest extent possible at the time they are responded to. Finally these questions are *Judicially Approved Form Interrogatories* and I know of no case law, which allows or



upholds objections to the form of the question as asked.<sup>1</sup> In fact case law is to the contrary: Objections to the entire set of interrogatories will not be sustained if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811. Since these are judicial approved interrogatories, a judge would surely sustain 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 interrogatories.

**General Objection No. 2:** (Summarized) "The Responding Party Objects to all the Form Interrogatories 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 *Judicially Approved Form Interrogatories* by the way they are phrased and/or interpreted by you invade the attorney client privilege? If so please provide the legal authority to support this blanket objection. Again, I object to this blanket objection, which must be stated in each an every response, not by way of general objections. Case law is clear: Objections to the entire set of interrogatories will not be sustained if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811

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 interrogatories.

**General Objection No. 3:** "THIS RESPONDING PARTY OBJECTS TO THESE INTERROGATORIES 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 this set of form interrogatories. This would hopefully allow you

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<sup>1</sup> I caveat this by noting that the only case to date addressing a valid objection to a form interrogatory is the case of *Nacht v. Superior Court* (cite omitted) which addressed the invasion of the attorney work product doctrine as to Form Interrogatory 12.1.

to provide clearer supplemental responses. Perhaps we can discuss this in more detail when we meet and confer on this issue.

Form Interrogatory No. 2.1: State:

- (a) Your name;
- (b) Every name you have used in the past;
- (c) The date you used each name;

Response to Form Interrogatory No. 2.1: Francis Arakal Joseph

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** You failed to provide a complete answer to this interrogatory. Is this because you object to this interrogatory because it violates the attorney client privilege and the attorney work product doctrine? Is this because you have not yet completed your investigation of this issue? According to your client's response to interrogatory 2.2, your client is a native of a foreign country. He is also a priest. Sometimes clergy take different names after they are ordained. Sometimes foreign nationals prior to becoming U.S. citizens change their name. We need to know and are entitled to know all prior aliases. I also do not believe that your clients identity is protected by the attorney client privilege or the attorney work product doctrine. Your response is incomplete. Please provide a supplemental, verified response to this interrogatory.

Form Interrogatory No. 2.11: At the time of the INCIDENT were you acting as an agent or employee for any PERSON? If so, state:

- (a) The name, ADDRESS, and telephone number of that PERSON;
- (b) A description of your duties.

Response to Form Interrogatory No. 2.11: Objection on the grounds that the question calls for a legal opinion and conclusion. Without waiving the objection, defendant responds that he is uncertain as to the exact dates of the visits that he made to plaintiffs' residence, which appear to form the basis of the allegations in plaintiffs' complaint. Without admitting that any incidents as described in plaintiffs' complaint ever occurred, defendant responds that his most recent visit to plaintiffs residence was made to perform a blessing on the home.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** The interrogatory is not asking for a legal conclusion or opinion. No established case law supports this objection. In fact case law states that this type of objection is improper. Case holding that responses to interrogatories that use objections which states "calls for opinion or conclusion" as *improper*. West Pico Furn. Co. v. Sup.Ct. (1961) 56 Cal.2d 407, 416-417, 15 Cal.Rptr. 119, 123.

If authority to the contrary exists, I would be happy to review it. The response by its own admission, states that your client did visit plaintiffs' residence to perform a blessing on the home and other visits (clearly identified in the complaint). We believe we are entitled to know, as to each and every visit alleged in the complaint, if in fact he was acting as an agent and/or employee of the any of the other named defendants.

In addition, I do not think this question is subject to your general objection No. 1, (further investigation and discovery is not necessary to be able to answer this interrogatory completely) or general objection No. 2: (your clients employment status at the time he allegedly molested these children is certainly not a subject of attorney client privilege) or general objection No. 3 (confusion about which incident we are talking about as the complaint only alleges two incidents, one in July 2001 and September 11, 2001).

Based on the foregoing, I would appreciate it if you would provide further supplemental, verified responses to this interrogatory.

**Form Interrogatory 12.2: Have YOU OR ANYONE ACTING ON YOUR BEHALF interviewed any individual concerning the incident? If so, for each individual state:**

- (a) the name, ADDRESS, and telephone number of the individual interviewed;
- (b) the date of the interview;
- (c) the name, ADDRESS, and telephone number of the person who conducted the interview;

**Response to Form Interrogatory 12.2:** Defendant objects on the grounds that the question is vague and ambiguous. Defendant further objects that the question seeks information protected by the attorney client privilege and/or the attorney work product doctrine. Without waiving these objections, Canon Lawyers of the Diocese of Stockton may have interviewed individuals concerning the incidents identified in the complaint, however, I am not aware of who may have been interviewed or when such interviews may have been conducted.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** First case law frowns upon the improper objections stated. Objections which state the question is "ambiguous." Courts generally do not sustain this kind of objection unless the question is totally unintelligible. The interrogatories propounded are judicially approved. The answering party owes a duty to respond in good faith as best he or she can. See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has disclosed all information available to him" (emphasis added)

Our investigation has revealed that not only a criminal investigation but a Diocese investigation was conducted regarding the allegations stated in the complaint. Certainly your client was a part of that investigation. The diocese may have produced reports as you so state, and, since the responding party is an employee of the defendant diocese,

(which can only be assumed by your failure to deny the same in your response to interrogatory 12.2) an adverse party, he has the ability to inquire into the identity of these reports which are not equally available to plaintiff. The law is clear. "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable effort to obtain information by inquiry to other natural persons or organizations, except where that information is equally available to the propounding party" C.C.P. Section 2030 (f) (1) (emphasis added). Further there is no cross complaint on file for indemnity, contribution or comparative fault. As you client is not adverse to the other defendants and was and still is an employee of the church, he has access this information. Please supplement this interrogatory with a verified, complete and non evasive response.

**Form Interrogatory 12.3: Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written record statements from any individual concerning INCIDENT? If so, for each statements state:**

- (a) the name, address and telephone number of the individual from in the statement was obtained;
- (b) the name, address and telephone number of the individual obtained a statement;
- (c) the date a statement was obtained;
- (d) the name, address and telephone number of each person who has the original statement or a copy.

**Response to Form Interrogatory 12.3:** Defendant objects on the grounds that the question is vague and ambiguous. Defendant further objects that the question seeks information protected by the attorney client privilege and/or attorney work product doctrine. Without waiving the objections, my attorney is in possession of copies of statements given by members of the St. Joseph's Parish staff, Jackie Tucker, Mary Mullins, Owen Kummerle and Rosario Hemandez.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

The interrogatory is not vague and ambiguous as the Judicial Counsel of California authorizes the form of the question. Case law frowns upon the improper objections stated. Objections which state the question is "ambiguous, confusing or overbroad" have been classified as improper objections by the courts of this state. Courts generally do not sustain this kind of objection unless the question is totally unintelligible. [citation listed above]. In addition, there is no attorney client privilege as to communications between independent witnesses or persons identified as Jackie Tucker, Mary Mullins, Owen Kummerle and Rosario Hemandez. These individuals are not represented by counsel for defendant Arakal, the responding party to these interrogatories. The privilege applies only to confidential communications between lawyer and client. There is no protection

for conversations in the presence of others whose presence was not essential to further the client's interests. Ca Evid § 952.

Further the responding party has a duty to provide complete responses to each and every subpart of this interrogatory, which was not done. Had the information been provided, one could move on to the next step in the analysis which is who acquired the statement? If it was taken by the other co-defendants then the work product doctrine does not apply, as to counsel for defendant Arakal. Nor can an attorney later "by retroactive adoption convert the independent work of another, already performed, into his own." *Jasper Construction, Inc. v. Foothill Junior College Dist.* (1979) 91 Cal.App.3d 1, 16, 153 Cal.Rptr. 767, 776 (internal quotes omitted).

If the statements identified were taken by counsel for Arakal, then they are still not, per se protected by this privilege as so stated. If the attorney's notes of a witness interview merely record what the witness said, they are not work product (they are only "evidentiary.") If the notes also reflect the attorney's (or his or her investigator's) impressions, conclusions, or opinions regarding the witness, at least those portions of the notes are absolutely protected from discovery. *Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal.App.3d 626, 647-648, 151 Cal.Rptr. 399, 410] Which is it? And, where the witness' statement and the attorney's impressions are inextricably intertwined, then absolute protection is afforded to all portions of the attorney's notes. *Rodriguez v. McDonnell Douglas Corp.*, supra, 87 Cal.App.3d at 647-648, 151 Cal.Rptr. at 410.

As the response is evasive, one is left to speculate if the privilege even applies. I would like to meet and confer on this issue or in the alternative please provide complete responses to this interrogatory in a verified, supplemental response.

**Form Interrogatory No. 12.6:** Was a report made by any person concerning incident? If so, state:

- (a) the name, title, identification number, and employer of the person who made the report;
- (b) the date and type of report made;
- (c) the name, address and telephone number of the person for in the report was made.

**Response to Form Interrogatory 12.6:** Defendant objects on the grounds that the question is vague and ambiguous and also that it seeks information protected by the attorney client privilege and/or attorney work product doctrine. Without waiving the objection, it is defendant's understanding that the Hughson Police Department may have made a report and that a report may have been made by Canon Lawyers of the Diocese of Stockton, however, defendant has never seen any such report.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** The vague and ambiguous objections are improper, as these are judicially approved form interrogatories and case law support our argument to the contrary. There is no attorney client privilege to reports generated by third parties and therefore not direct communications between counsel and the responding party. Work product does not apply unless the reports contain counsels' mental impressions. The response violates counsel and clients duty to answer completely the interrogatory stated and to conduct a reasonable investigation to ascertain the information necessary to answer the question. Please provide a supplemental verified response.

Form Interrogatory 13.1: Have YOU OR ANYONE ACTING ON YOUR BEHALF conducted surveillance of any individual involved in the INCIDENT or any party to this action? If so for each surveillance state:

- (a) the name, ADDRESS and telephone number of the individual or party;
- (b) the time, date and place of he surveillance;
- (c) the name, ADDRESS, and telephone number of the individual who conducted the surveillance.

Response to Form Interrogatory 13.1: Defendant is not aware of any such surveillance.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** The answer is evasive. As so stated in response to form interrogatory 1.0, these interrogatories were prepared by counsel. "...unlike depositions, interrogatory answers are prepared with the assistance of counsel. Therefore, a broader duty of response is justified" See *Weil and Brown, Civil Procedure Before Trial* Chapter 8 page 8F-36, Section 8:1053. That broader duty includes any surveillance instituted by defense counsel and not told to the client he represents. Please provide a supplemental response answering all subpart questions or denying counsel-instituting surveillance.

Form Interrogatory No. 15.1: Identify each and every denial of a material allegation and each special or affirmative defense in your pleadings and for each:

- (a) state all facts upon which you base the denial or special or affirmative defense;
- (b) state the names, ADDRESSES and telephone numbers of all PERSONS who have knowledge of those facts
- (c) Identify all DOCUMENTS and other tangible things which support your denial or special or affirmative defense, and state the name, ADDRESSES, and telephone number of the PERSON who has each DOCUMENT.

Response to Form Interrogatory No. 15.1: This responding party objects to this interrogatory on the ground that it requests information protected by the attorney client privilege and or the attorney work product doctrine. As a matter of proper pleading and practice, responding party has pled certain affirmative defenses and will not waive them here. This responding party further objects to this interrogatory as it purports to acquire what amounts to a verified response to an unverified complaint and also calls for this

responding party to speculate as to what are considered material allegations in the pleadings. This responding party further objects to this interrogatory as it is premature and responding party has not yet conducted discovery.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** This interrogatory is asking the responding party to substantiate each affirmative defense stated in their answer to the complaint. We are not asking that you waive a defense but would like to know what facts and evidence you have to support, in some cases, illogical defenses to this case. Some of the affirmative defenses allege that the molestation of the minor plaintiffs was a result of their own negligence, negligence of third parties, failure to mitigate the molestation, or that the claims are barred by the statute of limitations. Yet your other responses to request for admissions and interrogatories deny any molestation took place. This is illogical. Just as plaintiffs may be sanctioned for filing frivolous lawsuits, defendants may be sanctioned for asserting nonmeritorious cross-complaints or denials and defenses in their answers--e.g., answers containing dozens of affirmative defenses (waiver, estoppel, laches, unclean hands, etc.) for which there is no evidentiary support, please see or Ca Civ Pro § 128.7 (b) (1-3) requiring a party to not present an unmeritorious defense which will increase the cost of litigation. If you disagree with this line of argument, then please provide legal authority to support your objections of proper pleading practice, waiver and speculation. The responding party's response, which states that this interrogatory is premature, is without legal basis. An attorney in California cannot simply file a baseless complaint or baseless answer. As so stated in C.C.P. 128.7 (b) by presenting an answer to the court the attorney is certifying that "to the best of the persons knowledge, information, and belief, formed after an inquiry reasonable under the circumstances"...that it is not being presented for an improper purpose to harass or cause unnecessary delays and that the affirmative defenses have facts to support said defense. The argument that responding party has not had time to complete its investigation is also baseless. This is a molestation claim against the responding party, it is not a not a complex piece of litigation. As so state by the responding party the witnesses to the acts alleged are limited and the investigation, which defendant has had almost 6 months to complete is also baseless. Please provide a supplemental response to this interrogatory or provide authority to support your objections.

**Form Interrogatory No. 17.1:** asks for factual assertion to support each denial stated in the accompanying request for admissions.

**Responses to Request for Admissions No. 15-19** as well as the corresponding 17.1 interrogatory for No. 15-19. Instead a boilerplate objection similar to the response to form Interrogatory 15.1 was made and for the previously stated arguments is also baseless. Please provide complete verified supplemental responses to the admissions and the corresponding 17.1 interrogatory.

## DEFENDANTS RESPONSES TO SPECIAL INTERROGATORIES SET NO.1

The General objections stated in the beginning of the responses to special interrogatories are identical to those used in the answers to the form interrogatories. Per case law they are improper objections and should be removed or sustained. Objections to the entire set of interrogatories will not be sustained if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811. We will ask that you withdraw them in any supplemental response.

In addition, most of the objections stated are boilerplate, illegal and without authority in support of the objections.

### **SPECIAL INTERROGATORY NO. 1:**

YOUR personal and professional telephone numbers used by YOU during the calendar year 2001

**RESPONSE TO SPECIAL INTERROGATORY NO.1:** This responding defendant objects to the question as calling for information that is privileged and protected by the defendant's right of privacy. Responding defendant further objects that the question is harassing, overbroad and calling for 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.

### **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

The identity of a telephone number used to contact and plaintiffs is not privileged information, and no authority to support an objection is given. As to the privacy objection, the identity of a telephone numbers does not fall in the general zone of privacy protection such as personal finances and or in some instances medical records. Even then privacy protection is qualified, not absolute. A "balancing" is required: i.e., the need for discovery in each case must be weighed against the interests sought to be protected by the privacy right recognized. The responding party provides no authority to support their objections. The harassing and overbroad objection is also designed to obstruct production of the information sought. How is asking for the identity of a telephone number used to prey on minor children not relevant to this case? How is this harassing? Please provide the information requested in a supplemental response.

### **SPECIAL INTERROGATORY NO. 3:**

The name and address of any internet provider YOU were subscribed to in the year 2001.

**RESPONSE:** This responding defendant objects to the question as calling for information that is privileged and protected by the defendant's right of privacy. Responding defendant further objects that the question is harassing, overbroad and



calling for 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.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** The identity of the respondents internet provider is can lead to relevant evidence regarding visits by the defendant to adult child pornography web sites, which would be relevant to prove or disprove that the defendant has a sexual predisposition toward children. The right to privacy objection is not supported by any case law.

**SPECIAL INTERROGATORY NO. 4:**

The names, addresses, and telephone numbers of all minors you spoke to on the telephone during the months of May through September 2001.

**RESPONSE:** This responding defendant objects to the question as calling for information that is privileged and protected by the defendant's right of privacy. Responding defendant further objects that the question is harassing, overbroad and calling for the discovery of information that is neither relevant to any issue in this matter nor reasonably calculated to the discovery of admissible evidence.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** Plaintiffs have evidence that defendant has a custom and practice of calling minors at home when there parents are not there. In addition the information is relevant to plaintiffs being able to contact and interview other minors who may have been molested by defendant but have not yet come forward. There is no right to privacy in disclosure of third party's telephone number, and as I understand the objection it is a first party privacy objection. The interrogatory is not harassing, nor is it overbroad, it only seeks the identity of other minors contacted by defendant. Please provide a supplemental response to this discovery.

**SPECIAL INTERROGATORY NO. 5:**

The names, addresses and telephone numbers of each and every employee, agent or representative of the Diocese of Stockton regarding the INCIDENT to whom you communicated or to whom YOU communicated any information regarding the INCIDENT.

**RESPONSE:** This responding defendant objects to the question as vague, ambiguous, compound and complex.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** The objections are improper. Courts generally do not sustain this kind ("ambiguous, confusing or overbroad") of objection unless the question is totally unintelligible. The answering party owes a duty to respond in good faith as best he or she can. See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has disclosed all information available to him" The question is simply asking for the identity of any and all witnesses to the incidents stated in the complaint.

**SPECIAL INTERROGATORY NO. 8:**

Please state your Social Security Number.

**RESPONSE:** This responding defendant objects to the question as calling for information that is privileged and protected by the defendant's right of privacy. Responding defendant further objects that the question is harassing, overbroad and calling for the discovery of information that is neither relevant to any issue in this matter nor calculated to lead to the discovery of admissible evidence.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** Please cite authority to support your objections for privacy protections. The objections are improper and without legal basis. Courts generally do not sustain this kind ("ambiguous, confusing or overbroad") of objection unless the question is totally unintelligible. The answering party owes a duty to respond in good faith as best he or she can. See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has disclosed all information available to him" Further, the social security number of the defendant is necessary to check prior criminal and civil violations similar to those alleged in this complaint.

**SPECIAL INTERROGATORY NO. 9:**

Please identify the name address and telephone number of each and every minor, for whom YOU performed a blessing on the minors home, 3 months prior to the incident.

**RESPONSE:** This responding defendant objects to the question on the grounds that it seeks to obtain information in violation of the rights of privacy and/or religious freedom of individuals, not party to this lawsuit. Responding defendant further objects that the question is harassing, overbroad and calling for the discovery of information that is neither relevant to any issue in this matter nor calculated to lead to the discovery of admissible evidence.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** Please cite authority to support your objections for privacy protections. The objections are improper. Courts generally do not sustain this kind ("ambiguous, confusing or overbroad") of objection unless the question is totally unintelligible. The answering party owes a duty to respond in good faith as best he or she can. See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has disclosed all information available to him" Plaintiff's believe that the defendant uses his status as a priest to gain access to minors homes by offering blessings to the home owners. This information could lead to admissible evidence at trial, and we ask that you reconsider your objections and provide a supplemental response to this interrogatory.

**SPECIAL INTERROGATORY NO. 16:**

Please identify each and every minor (other than the plaintiffs to this action) their name, address and telephone number who YOU visited at their home/residence in the year 2001.

**RESPONSE:** This responding defendant objects to the question on the grounds that it seeks information that is privileged and protected by the privacy rights of the defendant and the privacy and/or religious freedom rights of persons not party to this lawsuit. Defendant further objects that the question is overbroad, harassing and oppressive and seeks the discovery of information that is neither relevant to any issue in this matter nor calculated to lead to the discovery of admissible evidence. Please supplement this response.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** As stated previously, the information requested is relevant to the discovery of other potential victims of sexual abuse. The objections with regard to privacy are unsupported by any authority. The "overbroad, harassing and oppressive" objections are inappropriate. Please supplement this response.

**SPECIAL INTERROGATORY NO. 17:**

Please identify each and every minor (other than the plaintiffs to this action) their name, address and telephone number who YOU had telephone contact with in the year 2001.

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

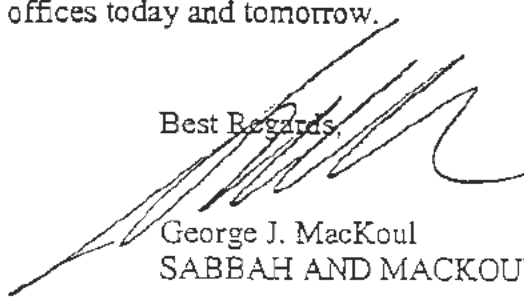
**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** As stated previously, the information requested is relevant to the discovery of other potential victims of sexual abuse. The objections with regard to privacy are unsupported by any authority. The "overbroad, harassing and oppressive" objections are inappropriate. Please supplement this response.

This letter will also confirm our agreement by telephone today, that you have stipulated to an open ended extension to allow us to file a motion to compel on the interrogatories that are subject to this letter and to your clients first set of responses to our request for production of documents, which will be the subject of our next meet and confer letter. We will then set a deadline for a motion to compel to be filed and served if

one is still necessary after we have met and conferred on the content of this letter and the one to follow.

I can be reached at our Falmouth offices today and tomorrow.

Best Regards,



George J. MacKoul  
SABBAH AND MACKOUL

Cc: Tony Boskovich Esq.

**EXHIBIT D**

**COUGHLAN & O'ROURKE LLP**

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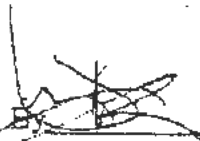
March 25, 2003

VIA FAX ONLY 508-495-4115

George J. MacKoul, Esq.  
Sabbah & MacKoul  
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

**EXHIBIT E**

COUGHLAN & O'ROURKE LLI

ATTORNEYS AT LAW

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May 29, 2003

George MacKoul, Esq.  
Sabbah & MacKoul  
49 Locust Street  
Falmouth, Massachusetts 02540

RE: *Machado v Illo, et al*

Dear Mr. McKoul:

I am writing in response to your letter of March 20, 2003 in an attempt to meet and confer with regard my client's responses to your discovery deemed by you to be "inadequate and deficient". I am hopeful that we will be able to resolve our differences without the necessity of intervention by the court.

I turn first to the general objections, which are interestingly very similar to those set forth in the responses of your clients, and which are given so as avoid the necessity of repeating the same objections to each and every question. Although I believe that it would constitute both a waste of time and paper, I am certainly willing to restate each and every objection as to every question so as to avoid the argument that they have been waived. My client has attempted in good faith to respond to each and every one of your numerous discovery requests based upon information available to him at this early stage of the litigation. In setting forth this general objection, I have simply stated the obvious that as the case develops and additional information becomes available, my client's responses may change.

With regard to General Objection No. 3, I must disagree with your characterization as the objection as "puzzling". In point of fact although a review of the complaint reveals allegations made against my client ranging from acts of sexual molestation and/or battery committed on July 25, 2001 along with claims of libel and slander taking place on September 11, 2001, the definitions section of your discovery requests describes "Incident as the accident, which is the subject matter of the plaintiff's complaint". Despite this ambiguity that requires the responding party to guess at the meaning of almost every question, my client has nevertheless attempted to respond to each question to the best of his ability, when in fact the lack of clarity would have justified an objection without response to each interrogatory.

As for objections to your Form Interrogatories your letter seems to take the position that since the Judicial Counsel approved them, they are somehow beyond objection. In that regard I would refer you to instruction 1(b) to the Form Interrogatories themselves, which specifically states that they neither change existing law relating to interrogatories nor affect a party's right to assert a privilege or objection.

EXHIBIT \_\_\_\_\_

E



### **Form Interrogatory 2.1**

My client has gone by no other names, and has given a complete response to the question.

### **Form Interrogatory 2.11**

As indicated previously, the complaint involves multiple allegations and describes more than one incident. The question fails to specify which incident, and is vague and ambiguous. Despite this, defendant attempted to respond to the question in good faith by describing the purpose of his most recent visit to the plaintiffs' home. Although that it may call for a legal opinion and conclusion generally does not serve as grounds for objection to an interrogatory, the objection is valid when the answer is intended to have probative value rather than to lead a party to probative evidence. See *West Pico Furn. Co. v. Sup.Ct.*(1961) 56 Cal2d. 407, 15 Cal Rptr 119. Based upon the allegations in the complaint there seems to be no doubt that the response to this interrogatory would be used for its probative as opposed to discovery value, and as such, the objection is with merit and in good faith.

### **Form Interrogatories 12.2 and 12.6**

For reasons stated above the question is vague and ambiguous in that it fails to define the term "incident". Defendant has nevertheless attempted to decipher its meaning and provide a good faith response. Like the plaintiff, defendant is aware that the Diocese of Stockton apparently conducted a Canon Law Investigation, however, this defendant was no more a part of the investigation than the plaintiffs and has no greater access to information relating to it than do they. Defendant has fully disclosed any information in his possession or control relating to that investigation and any conducted by a police agency.

### **Form Interrogatory 12.3**

This question again fails to adequately define the term "incident" and is vague and ambiguous. As for the subparts to the question seeking information about the specifics of the statements, this defendant does not have this information. To the extent that the statements may have been obtained at the request of counsel for the Diocese in contemplation of litigation prior to the retention of separate counsel on behalf of this defendant, it is my position that under the Joint Defense Doctrine, any privilege that originally attached to the statements was not waived by the development of a conflict that required separate counsel being retained. Regardless, this defendant has provided all of the information that he possesses concerning these statements.

### **Form Interrogatory 13.1**

Defendant has made a good faith attempt to respond to this interrogatory and in doing so is well aware of the duty to disclose information known to himself and or to counsel acting on his behalf. No such surveillance has been undertaken by or on behalf of this defendant, and although defendant believes that the response is clear, will nevertheless agree by stipulation to amend it to a simple "no".

## Form Interrogatory 15.1 and 17.1

Defendant stands by the objections and takes exception to the characterization that the stated affirmative defenses are illogical. California Law is clear that interrogatories requesting a party to state all contentions in support of affirmative defenses are improper. The complaint alleges multiple causes of action on behalf of three separate plaintiffs, one an adult, involving not only sexual molestation but also conspiracy, libel, slander and infliction of emotional distress. At this point in time, and most certainly at the time that the answer was filed, defendant lacked information concerning the specifics of the case, and was mindful that party who fails to plead affirmative defenses waives them. See *California Academy of Sciences v County of Fresno* (1987) 192 CalApp3d 1436, 238 CalRptr 154.

At this early stage of discovery defendant is simply not aware of all of the facts surrounding the multiple allegations in this case, and has asserted affirmative defenses on the principle that a party's denials and affirmative allegations of fact do not indicate perjury or fraud but simply attempt to raise all issues on which he may have some chance of success. See *Lynch and Freytag v Cooper* (1990) 218 CalApp3d, 603, 267 CalRptr 189.

### Special Interrogatories

#### No 1.

The complaint sets forth allegations concerning sexual battery/molestation by my client upon the minor plaintiffs after having been invited to their home and that he subsequently defamed their mother, apparently in response to her reporting of the charges to others. There is no claim that plaintiffs were stalked or preyed upon over the telephone, which if true would most certainly have become part of the police investigation. The mere fact that plaintiffs have made allegations does not dissolve defendant's right to privacy including his telephone number, disclosure of which will have no probative value as to any issue in the case. In addition, it is clear that disclosure of defendant's telephone number is sought so as to allow plaintiff's to seek the identities of other minors, none of which have come forward on their own, who likewise have a right to privacy from being contacted, interrogated and traumatized concerning a private association with their priest.

#### No 3.

Plaintiff's question makes a quantum leap by attempting to relate an individual's private perusal of pornography to pedophilia, an argument that would fill our prisons with subscribers to the Internet and publications such a Playboy Magazine. Discovery of visits to pornographic websites by a priest, while scintillating and highly prejudicial, would add nothing by way of probative value to the issues in this case, is clearly overbroad and a patent violation of the defendant's privacy rights.

No. 4, 9, 16, 17

These questions again raises the obvious issues of privacy rights of both the defendant and the third party minors, who it is assumed once identified will be subsequently contacted and interrogated by representatives of the plaintiff's in an attempt to discover non reported child abuse perpetrated by my client. While a question seeking the identities of other victims or even accusers might be discoverable, ones such as these requesting the identities of minors who may have answered the telephone or been present during a home visit without any incident or complaint are clearly overbroad and an abuse of the discovery process. The over breadth of the question becomes even more clear when the defendant has already been the subject of a police investigation prompted by the plaintiffs that revealed no evidence to substantiate the charges serving as the basis of this lawsuit.

No. 5

Referring again to the definitions of incident set forth in the plaintiff's interrogatories, the question most certainly is vague and ambiguous in that the responding party is required to guess at which of the incidents described in the complaint it refers. In addition, the interrogatory as phrased seems to ask alternative questions and is compound and complex at least to this reader.

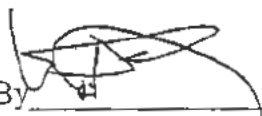
No. 8

Plaintiff claims the need for the defendant's social security number as a means of checking his alleged criminal record for similar criminal and civil violations. Defendant is not aware of any system that catalogues such records by social security number, nor of any discovery tool that would allow the plaintiff to access such a system were one to exist. An individual's social security number is highly private and once disclosed has been identified as a large component in the crime of identity theft. Plaintiff's request for this information is not calculated to lead to discoverable information, is overbroad and in violation of the defendant's privacy rights.

Again I am hopeful that we will be able to work out our differences with regard to this discovery, without involving the court, however, in the alternative we do need to discuss a deadline for the bringing of a motion to compel. In that regard I note that you are operating on a July 7, 2003 deadline with Mr. Balestracci, and would suggest that date so as to avoid multiple trips to California on your part.

I look forward to hearing from you in the near future.

Very truly yours,  
Coughlan & O'Rourke LLP

By   
Michael D. Coughlan

# EXHIBIT F

# SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION

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# COPY

PLEASE REPLY TO OUR FALMOUTH OFFICE

June 16, 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

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

Dear Mr. Coughlan:

This letter is in response to your letter of May 29, 2003. Please let me begin by thanking you for finally responding to my March 20, 2003 letter and for being so amicable with regard to extensions of time to file a motion while we attempt to resolve this discovery dispute. I eagerly await your response to my second meet and confer letter (dated May 23, 2003) regarding your client's document production.

I think it would be productive to respond to each of your arguments stated in your letter, point by point and hopefully you will better understand my client's position and provide supplemental responses to your discovery.

The second paragraph of your letter states:

*I turn first to the general objections, which are interestingly very similar to those set forth in the responses of your clients, and which are given so as avoid the necessity of repeating the same objections to each and every question. Although I believe that it would constitute both a waste of time and paper, I am certainly willing to restate each and every objection as to every question so as to avoid the argument that they have been*

EXHIBIT \_\_\_\_\_ F

*waived. My client has attempted in good faith to respond to each and every one of your numerous discovery requests based upon information available to him at this early stage of the litigation. In setting forth this general objection, I have simply stated the obvious that as the case develops and additional information becomes available, my client's responses may change.*

**MY RESPONSE:**

I don't see how my client's responses to the other defendants' discovery have any relevance to our discovery dispute. I did not give blanket objections at the beginning of my responses. Repeating the same in each individual response, for argument sake, is also not advisable unless you believe or have a good faith basis in the validity of your objections. I don't think your suppose to "object" unless you have a basis to do so. In other words, how can you possibly waive an objection that is not valid in the first place? To do so to the would be classic "boilerplate objecting" and would expose your client to sanctions.

The law is clear in this regard with respect to answering interrogatories. *Objections must be specific. A motion to compel lies where objections are "too general." Ca Civ Pro § 2030(l); See Korea Data Systems Co. Ltd. v. Sup.Ct. (Emphasis added) (Aamazing Technologies Corp.) (1997) 51 Cal.App.4th 1513, 1516, 59 Cal.Rptr.2d 925, 926--objecting party subject to sanctions for "boilerplate" objections. Monetary sanctions may be imposed for serving responses containing "boilerplate" objections (objections lacking the specificity required by Ca Civ Pro § 2030(l); without the necessity of a prior court order compelling responses. [See Korea Data Systems Co. Ltd. v. Sup.Ct. (Aamazing Technologies Corp.) (1997) 51 Cal.App.4th 1513.*

I will leave you to decide how to amend your responses with respect to your general objection no. 1, 2 and 3.

As far as your argument that the case is "developing", I do not see how this is an issue. You must state all that you and your client know and must investigate answers to the questions asked at the time you file the responses. The law is also clear in this regard. The responding party must make a reasonable effort to obtain whatever information is sought; and if unable to do so, must specify why the information is unavailable and what efforts he or she made to obtain it. See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 782, 149 Cal.Rptr. 499, 509. It is not enough that the information *may* come to you in the future, you have a duty to investigate the same and report it in your responses.

Based on your responses to our document request it is clear that you and the other co defendants are sharing vast amounts of information, including witness statements, and other documents, which contain information vital to plaintiff's case. Suffice to say your client is still working as a priest in the Diocese and is still directly under the authority of Bishop Blaire, and still has access to Fr. Illo and others. To somehow plead ignorance with regard to the details of this matter, which has been under investigation for *over a year* by your co-defendants, is not a fair representation of the facts.

In the next paragraph you state:

*With regard to General Objection No. 3, I must disagree with your characterization as the objection as "puzzling". In point of fact although a review of the complaint reveals allegations made against my client ranging from acts of sexual molestation and/or battery committed on July 25, 2001 along with claims of libel and slander taking place on September 11, 2001, the definitions section of your discovery requests describes "Incident as the accident, which is the subject matter of the plaintiffs complaint". Despite this ambiguity that requires the responding party to guess at the meaning of almost every question, my client has nevertheless attempted to respond to each question to the best of his ability, when in fact the lack of clarity would have justified an objection without response to each interrogatory.*

**MY RESPONSE:**

Again, I respectfully disagree with your position. The complaint filed against your client was very detailed and specific. You did not file a Demurrer or Motion to Strike, so I assume you understood the allegations against your client. As the meet and confer process is an opportunity to provide counsel time to communicate and clear up any ambiguity about what information the propounding party is seeking, let me clarify the same. As with each and every interrogatory, we are seeking answers from your client with respect to each and every allegation stated in the complaint against him. As you quite clearly point out, the allegations against your client are for the July 25, 2001 acts of sexual molestation and the September 11<sup>th</sup> acts of defamation. The complaint specifies his illegal behavior quite clearly and the facts are not complicated. We would therefore like your client to respond to each form interrogatory and address both issues. There is no need to guess at anything. If you re read the complaint it will give you a guidepost to what we are asking. If you need more information I would be happy to provide it to you. I hope this clears up any confusion your client may have.

**Form Interrogatory 2.11**

With regard to this interrogatory you state:

*As indicated previously, the complaint involves multiple allegations and describes more than one incident. The question fails to specify which incident, and is vague and ambiguous. Despite this, defendant attempted to respond to the question in good faith by describing the purpose of his most recent visit to the plaintiffs' home. Although that it may call for a legal opinion and conclusion generally does not serve as grounds for objection to an interrogatory, the objection is valid when the answer is intended to have probative value rather than to lead a party to probative evidence. See West Pico Furn. Co. v. Sup Ct. (1961) 56 Cal2d. 407, 15 Cal Rptr 119. Based upon the allegations in the complaint there seems to be no doubt that the response to this interrogatory would be used for its probative as opposed o discovery value, and as such, the objection is with merit and in good faith.*

**MY RESPONSE:**

I believe my prior response addresses your concerns regarding the allegations stated in our complaint. We would like to know if your client was an employee at the time of the incidents in July and September as so alleged in the complaint. The question is quite straightforward. I have read *West Pico Furniture* and the case states the following, which you quote out of context and admit that your objections "calls for a legal opinion and conclusion" are improper. As clearly stated in *West Pico* : "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". Citing *Greyhound Corp v. Superior Court* at p. 355). I believe that the law requires you to answer the question, and I would appreciate a supplemental response.

**Form Interrogatories 12.2 and 12.6**

Your letter states in response to our letter:

*For reasons stated above the question is vague and ambiguous in that it fails to define the term "incident". Defendant has nevertheless attempted to decipher its meaning and provide a good faith response. Like the plaintiff, defendant is aware that the Diocese of Stockton apparently conducted a Canon Law Investigation, however, this defendant was no more a part of the investigation than the plaintiffs and has no greater access to information relating to it than do they. Defendant has fully disclosed any information in his possession or control relating to that investigation and any conducted by a police agency.*

**MY RESPONSE:**

Again, the complaint and the allegations against your client are clear. In fact you seem to so state them quite clearly and concisely in your discussion regarding Special Interrogatory No. 1 wherein you state in your letter: "*The complaint sets forth allegations concerning sexual battery/molestation by my client upon the minor plaintiffs after having been invited to their home and that he subsequently defamed their mother, apparently in response to her reporting of the charges to others*". Therefore I would appreciate supplemental responses which do not contain the vague and ambiguous objection. The code also mandates that you answer each subpart completely and separately, rather than give one answer to all the subparts. This will avoid any confusions between which witnesses were at the scene or heard statements or had any knowledge. Further although you were not part of the investigation, you have statements in your possession related thereto, so you must have additional information which you are not sharing with plaintiff. How is it that your client was the subject of a Canonical investigation, but was never interviewed by the church or the other defendants?



With respect to 12. 2, again the subparts need to be answered separately and completely. How is it that you have statements from witnesses (Response No. 12.3) yet you claim ignorance to what they contain. If the statement exonerate your client, why would you not want to turn them over to the plaintiff's so that they can re assess their position?

As I understand it do you have a joint defense agreement with the other defendants? If so I would like to see a copy of the agreement. Would you agree to provide it to us informally?

Response No. 13.1:

I appreciate your clear "stipulation" in your letter. Would you mind putting the definitive "no" in a supplemental verified response. I don't think I can cross exam your client with a letter from you at the time of trial. A verified interrogatory is much better.

Form Interrogatory 15.1 and 17.1

Your letter states:

*Defendant stands by the objections and takes exception to the characterization that the stated affirmative defenses are illogical. California Law is clear that interrogatories requesting a party to state all contentions in support of affirmative defenses are improper. The complaint alleges multiple causes of action on behalf of three separate plaintiffs, one an adult, involving not only sexual molestation but also conspiracy, libel, slander and infliction of emotional distress. At this point in time, and most certainly at the time that the answer was filed, defendant lacked information concerning the specifics of the case, and was mindful that party who fails to plead affirmative defenses waives them. See California Academy of Sciences v County of Fresno (1987) 192 CalApp3d 1436, 238 CalRptr 154.*

*At this early stage of discovery defendant is simply not aware of all of the facts surrounding the multiple allegations in this case, and has asserted affirmative defenses on the principle that a party's denials and affirmative allegations of fact do not indicate perjury or fraud but simply attempt to raise all issues on which he may have some chance of success. See Lynch and Freytag v Cooper (1990) 218 CalApp3d, 603, 267 CalRptr 189.*

## MY RESPONSE

It is unfortunate that you want to stand by your objections. Perhaps if I explain our position more clearly you may consider changing your mind. I really don't think we want to waist the courts time with regard to this issue. My March 20 letter clearly spelled out the legal obligations an attorney has when filing an answer. I do not argue that you do not have the right to plead all affirmative defenses you believe are applicable to your case. You must do this or the defenses are waived. But this does not allow you to plead

defenses, which you have, a good faith belief at the time you file your answer cannot be proven. Case in point, as I understand it you deny any sexual misconduct existed between your client and mine. How then can you plead contributory negligence if no illegal act ever took place? Does that not seem logically inconsistent to you? The same applies to your "assumption of the risk defense" and your defense re: acts of third parties? The same hold true for the act of defamation. How can you lack specifics of the case. You claim your client was present in my clients home in July and at the meeting with Fr. Illo on September 11. You have read witness statement given to you by the church. The complaint in this matter was filed in September of last year, and you have reviewed police files and presumably other files in this matter. How can you state that your investigation is just beginning. You have a duty to investigate and report to the plaintiff's what the results of your investigation are.

Further, I do not want to have to file a summary judgment motion on your answer, in order to flush out this issue. This is too time consuming and expensive and would force my clients to have to file a motion for sanctions to recoup the expense of the same. It would be much easier for both of us to clear up this issue before hand.

With regard to the legal authority you site in your letter. I read the *California Academy* case, perhaps you mentioned the wrong case authority. That case concerns Estate Taxes and I do not find any language in the case which supports the proposition you are asserting?

Further, your interpretation of the *Lynch/Frytag v. Cooper* case is not analogous to this case. In *Lynch*, the court was discussing an unlawful detainer case and the issue in that case was "Does a defendant commit through allegations in their answer to the complaint the tort of Bad Faith Denial of the Existence of a Contract by pleading inconsistent defenses"? The case has nothing to do with your client's obligation to comply with a discovery request to provide evidence to SUPPORT the affirmative defenses plead in your answer.

Again, I suggest that you take a closer look at the *Lynch* case. If you disagree with this assessment please let me know. I would be happy to review any other authority you may have to support your position. Otherwise I would like an answer to the 15.1 interrogatory and all of its subparts as well as an amended response to our 17.1 interrogatory.

#### Special interrogatory No. 1.

In your letter you state:

*The complaint sets forth allegations concerning sexual battery/molestation by my client upon the minor plaintiffs after having been invited to their home and that he subsequently defamed their mother, apparently in response to her reporting of the charges to others. There is no claim that plaintiffs were stalked or preyed upon over the telephone, which if true would most certainly have become part of the police investigation. The mere fact*

*that plaintiffs have made allegations does not dissolve defendant's right to privacy including his telephone number, disclosure of which will have no probative value as to any issue in the case. In addition, it is clear that disclosure of defendant's telephone number is sought so as to allow plaintiffs to seek the identities of other minors, none of which have come forward on their own, who likewise have a right to privacy from being contacted, interrogated and traumatized concerning a private association with their priest.*

**My Response:**

Are you asserting the right to privacy on behalf of your client or the privacy of the minors you do not represent? As you well know, and as recent history has shown, victims of sexual molestation often do not come forward. We have evidence that your client would often contact minors at their homes. We believe we have the right to the phone records so that we can contact the other minor to see if they have also been molested. We believe we have a right to this information and we would like to know what legal authority you have to support your position.

**Special Interrogatories No. 4, 9, 16, 17**

You state in Your Letter:

*These questions again raises the obvious issues of privacy rights of both the defendant and the third party minors, who it is assumed once identified will be subsequently contacted and interrogated by representatives of the plaintiffs in an attempt to discover non reported child abuse perpetrated by my client. While a question seeking the identities of other victims or even accusers might be discoverable, ones such as these requesting the identities of minors who may have answered the telephone or been present during a home visit without any incident or complaint are clearly overbroad and an abuse of the discovery process. The over breadth of the question becomes even more clear when the defendant has already been the subject of a police investigation prompted by the plaintiffs that revealed no evidence to substantiate the charges serving as the basis of this lawsuit.*

**My Response:**

How are these questions an invasion of your client's privacy rights? How can you assert the right to privacy for these third parties? My understanding is that California courts have limited the assertion of third party privacy rights only under certain circumstances. Does these questions qualify for any of those? What case law do you rely on to support your arguments? The identity of his treating physician is not privileged?

Special Interrogatory No.5

Your letter states:

*Referring again to the definitions of incident set forth in the plaintiffs interrogatories, the question most certainly is vague and ambiguous in that the responding party is required to guess at which of the incidents described in the complaint it refers. In addition, the interrogatory as phrased seems to ask alternative questions and is compound and complex at least to this reader.*

My Response:

Special Interrogatory No. 5 simply asks your client to identify all employees of the Dioceses of Stockton who were involved in the incidents set forth in the complaint. So as to clarify the question for you, we are particularly interested in those individuals who were involved, or present as witnesses during the July and September 11 incidents discussed above. Would you please respond to this interrogatory now that I have clarified the same?

Special Interrogatory No.8:

Plaintiff claims the need for the defendant's social security number as a means of checking his alleged criminal record for similar criminal and civil violations. Defendant is not aware of any system that catalogues such records by social security number, nor of any discovery tool that would allow the plaintiff to access such a system were one to exist. An individual's social security number is highly private and once disclosed has been identified as a large component in the crime of identity theft. Plaintiff's request for this information is not calculated to lead to discoverable information, is overbroad and in violation of the defendant's privacy rights.

MY RESPONSE:

While I appreciate your arguments, could you direct me to legal authority to support the same. Plaintiff's would be willing to sign a confidentiality agreement with regard to use of the social security number as it applies to only this litigation. How can you argue that the use of this number does not lead to the discovery of admissible evidence when you argue that it will be used to do a background check of your client. Is not his background, i.e., prior criminal acts of sexual abuse not relevant to prove his propensity to sexually abuse minors in this case? How is it not relevant? Will these limitations satisfy your concerns?

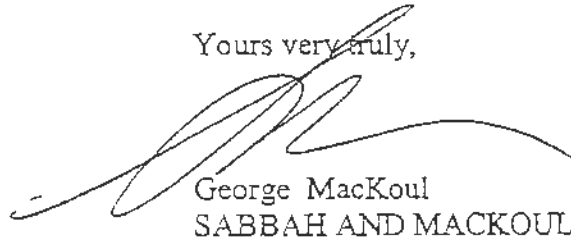
The discovery sent to your client has now been clarified and the authority to obtain the same justified. I believe my client is entitled to all or most of the responses in question. We are willing to work with you in order to avoid having to get the court involved to resolve this dispute. We do not want to go to court and ask for intervention,

as this will not be necessary since most of the legal issues stated in this letter are clearly in favor of the plaintiffs' position.

If you are suggesting that a July 7 deadline be met to file a motion should we fail to resolve this dispute, then you must respond to this letter by advising me if (1) you agree with our position and you will file supplemental responses before July 7, and/or if you disagree with our position and force us to file a motion. Bearing this in mind I would like a response to this letter on or before **June 23, 2003**, or one week from the faxing of this letter. I would also like some written response to my May 23 letter on or before June 23, with regard to your position with respect to your clients response to our document request. The reason I need to put you on such short notice is that I may have to file multiple motions and would like some lead-time. In the event you do not respond to this letter in one week, I will assume you are not going to alter your position and I will seek court intervention. If you need more time to respond to this letter and the May 23 2003 letter then let me know, I will grant you an extension if you will grant me an extension to file my motion beyond July 7. As I understand it we don't have a solid agreement that July 7 is the deadline for filing my motion as you "suggested" it to me to accommodate my travel schedule.

Anticipating that we can continue to work out our differences, I look forward to hearing from you.

Yours very truly,

A handwritten signature in black ink, appearing to be 'G. MacKoul', written in a cursive style. The signature is positioned above the printed name and firm name.

George MacKoul  
SABBAH AND MACKOUL

GJM/  
DICTATED BUT NOT READ TO AVOID DELAY

FILED

1001-9 PM 12:12  
BY Carmen Carrasco  
DEPUTY

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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 NOTICE OF MOTION**  
) **AND MOTION TO COMPEL**  
) **RESPONSES TO FORM**  
) **INTERROGATORIES FROM**  
) **DEFENDANT ARAKAL; REQUEST FOR**  
) **SANCTIONS PURSUANT TO C.C.P. 2023**  
) **MEMORANDUM OF POINTS AND**  
) **AUTHORITIES IN SUPPORT OF**  
) **MOTION, DECLARATION OF GEORGE**  
) **J. MACKOUL IN SUPPORT OF MOTION**  
) **TO COMPEL.**

) [Filed Concurrently with Separate  
) Statement Of Questions and Answers in  
) Dispute, Pursuant to California Rule of  
) Court 335]

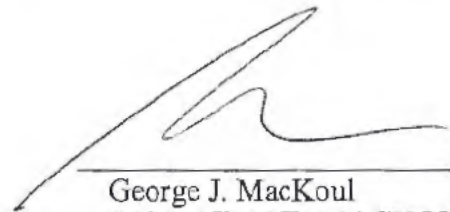
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26 YOU ARE HEREBY NOTIFIED THAT at 9 a.m. October 30, 2003 or as soon thereafter  
27 as the matter can be heard, in Department 42 of this Court, Plaintiff will move this Court for an  
28 order compelling defendant Fr. Francis Arakal to furnish further responses to the form  
29 interrogatories, set no. 1, propounded by plaintiff Rachael Lomas and shown on the Statement of

1 Questions and Answers in Dispute, (Rule of Court 335) attached hereto and served and filed  
2 separately herewith; AND ALSO FOR AN ORDER THAT said defendant and/or his counsel  
3 pay a monetary sanction to moving party in the sum of **\$3,836.30** for the reasonable expenses  
4 and attorney's fees incurred by the moving party in connection with this proceeding. Said motion  
5 will be made on the ground that the said interrogatories are relevant to the subject matter of this  
6 action, and do not relate to privileged matters, and that the said defendant's refusal to properly  
7 and thoroughly answer same is without substantial justification.

8 Said motion will be based on this notice, the points and authorities set forth below, the  
9 attached declaration of George J. MacKoul and the complete files and records in this action.

10  
11 Dated this 1st day of October, 2003



George J. MacKoul  
SABBAH AND MACKOUL  
Attorneys for the Plaintiffs







1 **extension** to file this motion to compel to the discovery propounded on January 6, 2003 (Exhibit  
2 D). On May 29, 2003, defense counsel for Arakal responded to plaintiff's March 20<sup>th</sup> letter  
3 invitation to plaintiff's meet and confer letter (Please see Exhibit E), standing by most of his  
4 objections and inadequate responses. Plaintiff responded to this letter on June 16, 2003  
5 explaining to defense counsel that his objections had no substantial justification and that based  
6 on established case law the interrogatories had to be supplemented (Exhibit F).

7  
8 To date no supplemental responses to the form interrogatories have been filed by  
9 defendant and no further meet and confer efforts have been made by the defense counsel.  
10 Therefore, plaintiff was left with no choice but to file this motion.

11  
12 II.

13 **DEFENDANT HAS A DUTY TO INVESTIGATE AND RESPOND FULLY TO FORM**  
14 **INTERROGATORIES, THIS WAS NOT DONE IN RESPONSE TO FORM**  
15 **INTERROGATORIES NO. 2.11, 12.2, 12.3, 15.1, AND THEREFORE FURTHER**  
16 **RESPONSES WITHOUT OBJECTION SHOULD BE ORDERED.**

17 The code requires that a party who responds to interrogatories must fulfill two separate  
18 and distinct duties, when providing responses an opposing party. The first duty is the *duty to*  
19 *obtain information*. "If the responding party does not personal knowledge sufficient to respond  
20 fully to an interrogatory, that party shall so state, but *shall make a reasonable effort to obtain*  
21 *information* by inquiry to other natural persons or organizations, except where that information is  
22 equally available to the propounding party" *C.C.P.* Section 2030 (f) (1) (emphasis added), also  
23 see *Deyo v. Kilbourne* (1979) 84 CA 3d 771, 783). "...unlike depositions, interrogatory answers  
24 are prepared with the assistance of counsel. Therefore, a broader duty of response is justified"  
25

1 See *Weil and Brown, Civil Procedure Before Trial* (1998) Chapter 8 page 8F-36, Section 8:1053.

2 In fulfilling a party's duty to "obtain information", case law is specific: *A party must obtain*  
3 *information from sources under the parties control.* "A party cannot plead ignorance to  
4 information which can be obtained from sources under his control" *Weil and Brown, Civil*  
5 *Procedure Before Trial*, supra at Section 8:1054, citing *Deyo v. Kilbourne*, supra at 782.

6  
7 The second duty a responding party has is the "*duty to provide complete answers*". Each  
8 answer given in a parties response must be "as complete and straightforward as the information  
9 reasonably available to the responding party permits. *If an interrogatory cannot be answered*  
10 *completely, it shall be answered to the extent possible.*" C.C. P. 2030 (f) (1) (emphasis added).  
11 Evasive answers are contrary to the rule of law, and are therefore improper. "An answer which  
12 supplies only part of the information requested is insufficient." See, *Weil and Brown, Civil*  
13 *Procedure Before Trial*, supra, Section 8:1048. "***Nor may a party, by deftly-worded conclusion***  
14 ***answers, evade a series of explicit questions.***" See, *Deyo v. Kilbourne*, supra at 771, 783  
15 (emphasis added). "Interrogatories should not be read by the recipient in an artificial manner  
16 designed to assure that answers are not truly responsive" See, *Weil and Brown, Civil Procedure*  
17 *Before Trial*, supra at Section 8:1048. "***Parties must state the truth, and nothing but the truth***  
18 ***in answering written interrogatories.***" See, *Union Bank v. Superior Court* (1995) 31 CA 4<sup>th</sup>  
19 573, 580 (emphasis added).

20  
21 As set forth in the concurrently filed Statement of Questions and Answers in Dispute, it  
22 is clear that defendant has failed in each of the duties described above.

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III.

**BOILERPLATE OBJECTIONS AND GENERAL OBJECTIONS TO ALL OF THE  
FORM INTERROGATORIES ARE NOT ALLOWED OR JUSTIFIABLE**

Objections to the **entire** set of interrogatories *will not be sustained* if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811. (Emphasis added). As set forth in the Separate Statement of Questions and Answers, **defendant initiated three “General Objections” to the entire set of form interrogatories at the beginning of his responses.** The law does not allow these types of objections and defendant should be ordered to remove them and should be ordered to file supplemental responses.

IV.

**OBJECTING TO JUDICIALLY APPROVED, FORM INTERROGATORIES WITH  
THE RESPONSE “CALLS FOR A LEGAL CONCLUSION” IS AN IMPROPER  
OBJECTION.**

An objection that “calls for opinion or conclusion” is *improper*. *West Pico Furn. Co. v. Sup.Ct.* (1961) 56 Cal.2d 407, 416-417, 15 Cal.Rptr. 119, 123. Defendant uses this objection in his responses to form interrogatory 2.11 to avoid having to answer the critical issue “were you acting as an employee for any person at the time of the incident?”



V.

**OBJECTIONS, WHICH STATE THAT A FORM INTERROGATORY IS UNINTELLIGABLE IS UNFAIR, AND AN ABUSE OF THE DISCOVERY PROCESS.**

As set forth in the meet and confer letters sent to the defendant and as further illustrated by the Separate Statement attached herein, defendant has refused to answer judicially approved form interrogatories by hiding behind an "unintelligible objection." Courts generally do not sustain this kind of objection unless the question is totally unintelligible. The interrogatories propounded are judicially approved. The answering party owes a **duty** to respond in good faith as best he or she can. See *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509.

VI.

**DEFENDANT'S ATTORNEY MAKES ILLOGICAL OBJECTIONS AND ATTEMPTS TO APPLY THE ATTORNEY CLIENT PRIVILEGE AND ATTORNEY WORK PRODUCT DOCTRINE TO INDIVIDUALS HE DOES NOT REPRESENT.**

Defendant Arakal and his counsel attempt to object to information such as statements made by employees of the defendant Diocese, that were given to Defendant Arakal's counsel, by co-counsel for the diocese. (See Plaintiff's Separate Statement specifically, defendants objections and responses to form interrogatory 12.2 and 12.3). These are statements made by then employees of the Diocese of Stockton, individuals that are not represented by defense counsel for Arakal. Yet counsel for Arakal claims "attorney client privilege" and "work product privilege" to statements made by person who he does not represent, nor authored by him.

1 To further add insult to injury, counsel states in his response to form interrogatory 12.2  
2 asking counsel for information regarding interviews of witnesses he responds, "Canon lawyers of  
3 the Diocese of Stockton may have interviewed individuals concerning the incidents identified in  
4 the complaint, however, I am not aware of who may have been interviewed or when such  
5 interviews may have been conducted". Yet this response is contradicted in the very next  
6 response to Form Interrogatory 12.3, when asked if defendant obtained any written or recorded  
7 statements concerning the incident, her responds (in part after baseless objections), "my attorney  
8 is in possession of copies of statements given by members of the St. Joseph's Parish Staff, Jackie  
9 Tucker, Mary Mullins, Owen Kummerle and Rosario Hernandez". Defendant then refuses to  
10 hand over the statements when a demand for production of documents is made. (See the  
11 concurrently filed motion to compel defendant to respond to plaintiff's first production of  
12 documents request, request no. 11).

14 Clearly, defendants are abusing the discovery process.

16 VII.

17 **DEFENDANT REFUSES TO ANSWER FORM INTERROGATORY 15.1, WHICH**  
18 **SIMPLY ASKS HIM TO STATE ALL FACTS AND IDENTIFY ALL WITNESSES WHO**  
19 **WILL SUPPORT EACH OF HIS AFFIRMATIVE DEFENSES.**

20 The discovery act of this state was mandated by the legislature to prevent lack of  
21 surprises in civil litigation. Full disclosure of facts, witnesses and documents (not protected by  
22 any legal privilege) are, as a matter of law, required to be disclosed to opposing parties. The  
23 openness of the discovery process allows each side to further evaluate his or her clients claims,  
24 defenses and affirmative causes of action as the case proceeds toward trial. Discoverable  
25

1 information can sometimes aid in the settlement or early resolution of a case. On the other hand  
2 hiding the information or refusing to disclose it to an opponent increases the amount of time and  
3 money a party must put into a particular case, in order to obtain information they are legally  
4 entitled to.

5 Such is the case in defendant's refusal to answer Form Interrogatory 15. 1 requesting that  
6 defendants disclose information regarding the identify of facts, witnesses and documents to  
7 support his affirmative defenses that the minor plaintiff's were molested by third parties, caused  
8 their own molestation by acting comparatively negligent and that their claims are barred by the  
9 statute of limitations. The logic of these defenses is also dissolved in defendant's denial in  
10 response to plaintiff's request for admissions, set no. 1, that no molestation ever took place!

11 As stated in the Separate Statement of Questions and Answers, defendants, as a matter of  
12 law, cannot file frivolous answers. There must be some evidentiary support to defendants  
13 affirmative defenses.  
14

15 VIII.

16 **BECAUSE OF DEFENDANTS ABUSE OF THE DISCOVERY PROCESS, SANCTIONS**  
17 **ARE APPROPRIATE AND SHOULD BE ASSESSED AGAINST DEFENDANT FOR**  
18 **THE COST OF BRINGING THIS MOTION.**

19 Failure to respond to interrogatories, evasive responses, and objections lacking  
20 substantial justification are "misuses of the discovery process." Ca Civ Pro § 2023(a)(4)-(6).  
21 Ca Civ Pro § 2023(a) sets forth a **nonexclusive** catalog of "misuses" of discovery for which  
22 sanctions may be imposed, including:

23 -- " Using a discovery method improperly (i.e., "in a manner that does not comply with its  
24 specified procedures".  
25



1 -- Using a discovery method so as to cause "unwarranted annoyance, embarrassment or  
2 oppression or undue burden and expense."

3 -- Failing to respond or submit to an authorized method of discovery.

4 -- "Making, without substantial justification, an unmeritorious objection to discovery."

5 ----"Making an evasive response to discovery."

6 Monetary sanctions may be imposed for serving responses containing "**boilerplate**"  
7 objections (objections lacking the specificity required by Ca Civ Pro § 2030(f); see ¶8:1071 ff.)  
8 without the necessity of a prior court order compelling responses. [See Korea Data Systems Co.  
9 Ltd. v. Sup.Ct. (Aamazing Technologies Corp.) (1997) 51 Cal.App.4th 1513, 1516, 59  
10 Cal.Rptr.2d 925, 926--dealing with Ca Civ Pro § 2031 document requests]

11 The court "**shall**" impose a monetary sanction against the losing party or attorney unless  
12 it finds:

- 13 • "The one subject to the sanction acted with substantial justification"; or that  
14 • "Other circumstances make the imposition of the sanction unjust." [Ca Civ Pro § 2030(l)  
15 (emphasis added)]

16 Unless one of the above excuses is shown, the court apparently may not refuse to  
17 impose the monetary sanction. And, the burden is on the losing party to prove such excuse.  
18 [Mattco Forge, Inc. v. Arthur Young & Co. (1990) 223 Cal.App.3d 1429, 1441, 273 Cal.Rptr.  
19 262, 269--losing party presumptively must pay monetary sanction to prevailing party].

20 There is no substantial justification for the responses or lack thereof given by defendants.

21 Based on the attached declaration of Attorney MacKoul, a request that sanctions be  
22 awarded in the amount of \$3,836.30 against either defendant and/or his counsel.


IX.

CONCLUSION

Based on the foregoing plaintiff respectfully requests that his motion be granted.

Dated:

10/7/03



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George J. MacKoul  
Attorney for Plaintiffs

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DECLARATION OF GEORGE J. MACKOUL

I George J. MacKoul declare and state:

1. I am attorney of record for all of the plaintiffs in the above captioned matter. As such, I am responsible for the day to day handling of this file. If called to testify, I would and could state from my own personal knowledge the following facts
2. Attached, as Exhibit A is a true and correct copy of Form Interrogatories, Set Number 1, mailed by Plaintiff Rachel Lomas to Defendant Arakal on January 6, 2003.
3. Attached, as Exhibit B is a true and correct copy of Defendants Arakal's Responses to Form Interrogatories Set I, mailed to Plaintiff's counsel on February 7, 2003.
4. Attached, as Exhibit C is a true and correct copy of a letter dated March 20, 2003 from plaintiff's counsel to defense counsel inviting the same to meet and confer per the code of civil procedure regarding the inadequacy of the responses given by defendant and a request for supplementation.
5. Attached, as Exhibit D is a March 25, 2003 letter from defense counsel to plaintiff's counsel granting an open-ended extension of time to file this motion.
6. Attached, as Exhibit E is March 29, 2003 letter from defense counsel to plaintiffs counsel responding to plaintiff's invitation to meet and confer and in essence affirming his intent to stand by his objections.
7. Attached, as Exhibit F is a June 16, 2003 letter from plaintiff's counsel which was in response to defendants March 29 letter explaining why his arguments with regard to standing by his objections and improper answers was not correct.

1 8. To date defense counsel has not contact plaintiff's counsel with any further information  
2 or shown any intent to compromise his position with regard to his improper and illegal  
3 responses to these interrogatories. Accordingly plaintiff's counsel has no other option but  
4 to file this motion.

5 9. I am requesting the following sanctions for the time it took me to prepare and file this  
6 motion.

- 7
- 8 a. March 20, 2003 letter inviting defendant to meet and confer including legal  
9 research took approximately 10 hours (14 page letter). (The court can divide this  
10 in half or **5 hours** for purposes of assigning the time for this as it applies to this  
11 motion and the Motion to Compel Answers to Special interrogatories as the letter  
12 addressed each set of responses.)
- 13 b. Read and review defense counsel's May 29<sup>th</sup> letter/response to my March 20,  
14 2003 letter, and research of the case law cited in defense counsels letter took  
15 approximately 2 hours (for purposes of this motion one half of this time can be  
16 divided between this motion and the Motion to Compel Responses to Special  
17 Interrogatories as the letter addressed issues to each set of responses or **1 Hour** of  
18 time).
- 19 c. Researched and drafted June 16, 2003 response letter to defenses counsels May  
20 29<sup>th</sup> letter ( 9 page letter with case cites), 10 hours of time (for purposes of this  
21 motion one half of this time can be divided between this motion and the Motion to  
22 Compel Responses to Special interrogatories as the letter addressed issues to each  
23 set of responses or **5 hours** of time).
- 24 d. Research and drafting of this motion **5 hours** of time.
- 25

1 e. Travel to and from my Patterson Office to Stockton (2hrs) and anticipation of 1  
2 hour of court time to argue and resolve this motion.

3 10. My average billable hourly rate is \$200.00 per hour as this is the rate and therefore I am  
4 asking the court to award me 19 hours of time or (19 x \$200.00 plus filing fee for this  
5 motion of \$36.30) or \$3,836.30 be awarded to plaintiff's counsel against either defendant  
6 or his counsel, for the cost of bringing this motion.

7 I declare under penalty of perjury the forgoing to be true and correct.

8 Date: October 6, 2003

9  
10   
George J. MacKoul

# EXHIBIT A



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, bar number, and address): <b>George Joseph MacKoul Esq.</b> <b>SABBAH AND MACKOUL</b> 49 Locust Street Falmouth, Massachusetts 02540	bar number, and address): <b>(Bar # 170586)</b>	TELEPHONE AND FAX NOS. <b>(508) 495-4955 (508) 495-4115</b>
ATTORNEY FOR (Name): <b>Kathleen Machado, Guardian Ad Litem for for Rachel Lomas, Plaintiff</b>		
NAME OF COURT AND JUDICIAL DISTRICT AND BRANCH COURT, IF ANY: <b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN, STOCKTON</b>		
SHORT TITLE OF CASE: <b>Lomas v. Diocese of Stockton et. al.</b>		
<b>FORM INTERROGATORIES</b> Asking Party: <b>Rachel Lomas by her Guardian Ad Litem Kathleen Machado</b>  Answering Party: <b>Fr. Francis Joseph, a.k.a. Fr. Francis Arakal</b> Set No.: <b>1</b>		CASE NUMBER:          <b>CV 018440</b>

**Sec. 1. Instructions to All Parties**

(a) These are general instructions. For time limitations requirements for service on other parties, and other details, see Code of Civil Procedure section 2030 and the cases construing it.

(b) These interrogatories do not change existing law relating to interrogatories nor do they affect an answering party's right to assert any privilege or objection.

**Sec. 2. Instructions to the Asking Party**

(a) These interrogatories are designed for optional use in the superior courts only. A separate set of interrogatories, Form Interrogatories—Economic Litigation (form FI-129), which have no subparts, are designed for optional use in municipal courts. However, they also may be used in superior courts. See Code of Civil Procedure section 94.

(b) Check the box next to each interrogatory that you want the answering party to answer. Use care in choosing those interrogatories that are applicable to the case.

(c) You may insert your own definition of INCIDENT in Section 4, but only where the action arises from a course of conduct or a series of events occurring over a period of time.

(d) The interrogatories in section 16.0, Defendant's Contentions — Personal Injury, should not be used until the defendant has had a reasonable opportunity to conduct an investigation or discovery of plaintiff's injuries and damages.

(e) Additional interrogatories may be attached.

**Sec. 3. Instructions to the Answering Party**

(a) In superior court actions, an answer or other appropriate response must be given to each interrogatory checked by the asking party.

(b) As a general rule, within 30 days after you are served with these interrogatories, you must serve your responses on the asking party and serve copies of your responses on all other parties to the action who have appeared. See Code of Civil Procedure section 2030 for details.

(c) Each answer must be as complete and straightforward as the information reasonably available to you permits. If an interrogatory cannot be answered completely, answer it to the extent possible.

(d) If you do not have enough personal knowledge to fully answer an interrogatory, say so, but make a reasonable and good faith effort to get the information by asking other persons or organizations, unless the information is equally available to the asking party.

(e) Whenever an interrogatory may be answered by referring to a document, the document may be attached as an exhibit to the response and referred to in the response. If the document has more than one page, refer to the page and section where the answer to the interrogatory can be found.

(f) Whenever an address and telephone number for the same person are requested in more than one interrogatory, you are required to furnish them in answering only the first interrogatory asking for that information.

(g) Your answers to these interrogatories must be verified, dated, and signed. You may wish to use the following form at the end of your answers:

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

(DATE)

(SIGNATURE)

**Sec. 4. Definitions**

Words in **BOLDFACE CAPITALS** in these interrogatories are defined as follows:

(a) (Check one of the following):

(1) **INCIDENT** includes the circumstances and events surrounding the alleged accident, injury, or other occurrence or breach of contract giving rise to this action or proceeding.

(2) **INCIDENT** means (insert your definition here or on a separate, attached sheet labeled "Sec. 4(a)(2)");

(Continued)

Page one of eight

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(b) **YOU OR ANYONE ACTING ON YOUR BEHALF** includes you, your agents, your employees, your insurance companies, their agents, their employees, your attorneys, your accountants, your investigators, and anyone else acting on your behalf.

(c) **PERSON** includes a natural person, firm, association, organization, partnership, business, trust, corporation, or public entity.

(d) **DOCUMENT** means a writing, as defined in Evidence Code section 250, and includes the original or a copy of handwriting, typewriting, printing, photostating, photographing and every other means of recording upon any tangible thing and form of communicating or representation, including letters, words, pictures, sounds, or symbols, or combinations of them.

(e) **HEALTH CARE PROVIDER** includes any **PERSON** referred to in Code of Civil Procedure section 667.7(e)(3).

(f) **ADDRESS** means the street address, including the city, state, and zip code.

## Sec. 5. Interrogatories

The following interrogatories have been approved by the Judicial Council under Code of Civil Procedure section 2033.5:

### CONTENTS

- 1.0 Identity of Persons Answering These Interrogatories
- 2.0 General Background Information — Individual
- 3.0 General Background Information — Business Entity
- 4.0 Insurance
- 5.0 [Reserved]
- 6.0 Physical, Mental, or Emotional Injuries
- 7.0 Property Damage
- 8.0 Loss of Income or Earning Capacity
- 9.0 Other Damages
- 10.0 Medical History
- 11.0 Other Claims and Previous Claims
- 12.0 Investigation — General
- 13.0 Investigation — Surveillance
- 14.0 Statutory or Regulatory Violations
- 15.0 Special or Affirmative Defenses
- 16.0 Defendant's Contentions — Personal
- 17.0 Responses to Request for Admissions
- 18.0 [Reserved]
- 19.0 [Reserved]
- 20.0 How the Incident Occurred — Motor Vehicle
- 25.0 [Reserved]
- 30.0 [Reserved]
- 40.0 [Reserved]
- 50.0 Contract
- 60.0 [Reserved]
- 70.0 Unlawful Detainer [See separate form FI-128]
- 101.0 Economic Litigation [See separate form FI-129]

#### 1.0 Identity of Persons Answering These Interrogatories

- 1.1 State the name, **ADDRESS**, telephone number, and relationship to you of each **PERSON** who prepared or assisted in the preparation of the responses to these interrogatories. (Do not identify anyone who simply typed or reproduced the responses.)

#### 2.0 General Background Information — Individual

- 2.1 State:
- (a) your name;
  - (b) every name you have used in the past;
  - (c) the dates you used each name.
- 2.2 State the date and place of your birth.
- 2.3 At the time of the **INCIDENT**, did you have a driver's license? If so state:
- (a) the state or other issuing entity;
  - (b) the license number and type;
  - (c) the date of issuance;
  - (d) all restrictions.
- 2.4 At the time of the **INCIDENT**, did you have any other permit or license for the operation of a motor vehicle? If so, state:
- (a) the state or other issuing entity;
  - (b) the license number and type;
  - (c) the date of issuance;
  - (d) all restrictions.
- 2.5 State:
- (a) your present residence **ADDRESS**;
  - (b) your residence **ADDRESSES** for the last five years;
  - (c) the dates you lived at each **ADDRESS**.
- 2.6 State:
- (a) the name, **ADDRESS**, and telephone number of your present employer or place of self-employment;
  - (b) the name, **ADDRESS**, dates of employment, job title, and nature of work for each employer or self-employment you have had from five years before the **INCIDENT** until today.
- 2.7 State:
- (a) the name and **ADDRESS** of each school or other academic or vocational institution you have attended beginning with high school;
  - (b) the dates you attended;
  - (c) the highest grade level you have completed;
  - (d) the degrees received.
- 2.8 Have you ever been convicted of a felony? If so, for each conviction state:
- (a) the city and state where you were convicted;
  - (b) the date of conviction;
  - (c) the offense;
  - (d) the court and case number.
- 2.9 Can you speak English with ease? If not, what language and dialect do you normally use?
- 2.10 Can you read and write English with ease? If not, what language and dialect do you normally use?
- 2.11 At the time of the **INCIDENT** were you acting as an agent or employee for any **PERSON**? If so, state:
- (a) the name, **ADDRESS**, and telephone number of that **PERSON**;
  - (b) a description of your duties.
- 2.12 At the time of the **INCIDENT** did you or any other person have any physical, emotional, or mental disability or condition that may have contributed to the occurrence of the **INCIDENT**? If so, for each person state:

(Continued)

- (a) the name, ADDRESS, and telephone number;
- (b) the nature of the disability or condition;
- (c) the manner in which the disability or condition contributed to the occurrence of the INCIDENT.

- 2.13 Within 24 hours before the INCIDENT did you or any person involved in the INCIDENT use or take any of the following substances: alcoholic beverage, marijuana, or other drug or medication of any kind (prescription or not)? If so, for each person state:
- (a) the name, ADDRESS, and telephone number;
  - (b) the nature or description of each substance;
  - (c) the quantity of each substance used or taken;
  - (d) the date and time of day when each substance was used or taken;
  - (e) the ADDRESS where each substance was used or taken;
  - (f) the name, ADDRESS, and telephone number of each person who was present when each substance was used or taken;
  - (g) the name, ADDRESS, and telephone number of any HEALTH CARE PROVIDER that prescribed or furnished the substance and the condition for which it was prescribed or furnished.

### 3.0 General Background Information — Business Entity

- 3.1 Are you a corporation? If so, state:
- (a) the name stated in the current articles of incorporation;
  - (b) all other names used by the corporation during the past ten years and the dates each was used;
  - (c) the date and place of incorporation;
  - (d) the ADDRESS of the principal place of business;
  - (e) whether you are qualified to do business in California.
- 3.2 Are you a partnership? If so, state:
- (a) the current partnership name;
  - (b) all other names used by the partnership during the past ten years and the dates each was used;
  - (c) whether you are a limited partnership and, if so, under the laws of what jurisdiction;
  - (d) the name and ADDRESS of each general partner;
  - (e) the ADDRESS of the principal place of business.
- 3.3 Are you a joint venture? If so, state:
- (a) the current joint venture name;
  - (b) all other names used by the joint venture during the past ten years and the dates each was used;
  - (c) the name and ADDRESS of each joint venturer;
  - (d) the ADDRESS of the principal place of business.
- 3.4 Are you an unincorporated association? If so, state:
- (a) the current unincorporated association name;
  - (b) all other names used by the unincorporated association during the past ten years and the dates each was used;
  - (c) the ADDRESS of the principal place of business.
- 3.5 Have you done business under a fictitious name during the past ten years? If so, for each fictitious name state:
- (a) the name;
  - (b) the dates each was used;

- (c) the state and county of each fictitious name filing;
- (d) the ADDRESS of the principal place of business.

- 3.6 Within the past five years has any public entity registered or licensed your businesses? If so, for each license or registration:
- (a) identify the license or registration;
  - (b) state the name of the public entity;
  - (c) state the dates of issuance and expiration.

### 4.0 Insurance

- 4.1 At the time of the INCIDENT, was there in effect any policy of insurance through which you were or might be insured in any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the INCIDENT? If so, for each policy state:
- (a) the kind of coverage;
  - (b) the name and ADDRESS of the insurance company;
  - (c) the name, ADDRESS, and telephone number of each named insured;
  - (d) the policy number;
  - (e) the limits of coverage for each type of coverage contained in the policy;
  - (f) whether any reservation of rights or controversy or coverage dispute exists between you and the insurance company;
  - (g) (the name, ADDRESS, and telephone number of the custodian of the policy.
- 4.2 Are you self-insured under any statute for the damages, claims, or actions that have arisen out of the INCIDENT? If so, specify the statute.

### 5.0 [Reserved]

### 6.0 Physical, Mental, or Emotional Injuries

- 6.1 Do you attribute any physical, mental, or emotional injuries to the INCIDENT? If your answer is "no," do not answer interrogatories 6.2 through 6.7.
- 6.2 Identify each injury you attribute to the INCIDENT and the area of your body affected.
- 6.3 Do you still have any complaints that you attribute to the INCIDENT? If so, for each complaint state:
- (a) a description;
  - (b) whether the complaint is subsiding, remaining the same, or becoming worse;
  - (c) the frequency and duration.
- 6.4 Did you receive any consultation or examination (except from expert witnesses covered by Code of Civil Procedure section 2034) or treatment from a HEALTH CARE PROVIDER for any injury you attribute to the INCIDENT? If so, for each HEALTH CARE PROVIDER state:
- (a) the name, ADDRESS, and telephone number;
  - (b) the type of consultation, examination, or treatment provided;

(Continued)

- (c) the dates you received consultation, examination, or treatment;
- (d) the charges to date.

6.5 Have you taken any medication, prescribed or not, as a result of injuries that you attribute to the **INCIDENT**? If so, for each medication state:

- (a) the name;
- (b) the **PERSON** who prescribed or furnished it;
- (c) the date prescribed or furnished;
- (d) the dates you began and stopped taking it;
- (e) the cost to date.

6.6 Are there any other medical services not previously listed (for example, ambulance, nursing, prosthetics)? If so, for each service state:

- (a) the nature;
- (b) the date;
- (c) the cost;
- (d) the name, **ADDRESS**, and telephone number of each provider.

6.7 Has any **HEALTH CARE PROVIDER** advised that you may require future or additional treatment for any injuries that you attribute to the **INCIDENT**? If so, for each injury state:

- (a) the name and **ADDRESS** of each **HEALTH CARE PROVIDER**;
- (b) the complaints for which the treatment was advised;
- (c) the nature, duration, and estimated cost of the treatment.

#### 7.0 Property Damage

7.1 Do you attribute any loss of or damage to a vehicle or other property to the **INCIDENT**? If so, for each item of property:

- (a) describe the property;
- (b) describe the nature and location of the damage to the property;
- (c) state the amount of damage you are claiming for each item of property and how the amount was calculated;
- (d) if the property was sold, state the name, **ADDRESS**, and telephone number of the seller, the date of sale, and the sale price.

7.2 Has a written estimate or evaluation been made for any item of property referred to in your answer to the preceding interrogatory? If so, for each estimate or evaluation state:

- (a) the name, **ADDRESS**, and telephone number of the **PERSON** who prepared it and the date prepared;
- (b) the name, **ADDRESS**, and telephone number of each **PERSON** who has a copy;
- (c) the amount of damage stated.

7.3 Has any item of property referred to in your answer to interrogatory 7.1 been repaired? If so, for each item state:

- (a) the date repaired;
- (b) a description of the repair;
- (c) the repair cost;
- (d) the name, **ADDRESS**, and telephone number of the **PERSON** who repaired it;
- (e) the name, **ADDRESS**, and telephone number of the **PERSON** who paid for the repair.

#### 8.0 Loss of Income, Earning Capacity

8.1 Do you attribute any loss of income or earning capacity to the **INCIDENT**? If your answer is "no," do not answer interrogatories 8.2 through 8.8.

8.2 State:

- (a) the nature of your work;
- (b) your job title at the time of the **INCIDENT**;
- (c) the date your employment began.

8.3 State the last date before the **INCIDENT** that you worked for compensation.

8.4 State your monthly income at the time of the **INCIDENT** and how the amount was calculated.

8.5 State the date you returned to work at each place of employment following the **INCIDENT**.

8.6 State the dates you did not work and for which you lost income.

8.7 State the total income you have lost to date as a result of the **INCIDENT** and how the amount was calculated.

8.8 Will you lose income in the future as a result of the **INCIDENT**? If so, state:

- (a) the facts upon which you base this contention;
- (b) an estimate of the amount;
- (c) an estimate of how long you will be unable to work;
- (d) how the claim for future income is calculated.

#### 9.0 Other Damages

9.1 Are there any other damages that you attribute to the **INCIDENT**? If so, for each item of damage state:

- (a) the nature;
- (b) the date it occurred;
- (c) the amount;
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** to whom an obligation was incurred.

9.2 Do any **DOCUMENTS** support the existence or amount of any item of damages claimed in interrogatory 9.1? If so, state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

#### 10.0 Medical History

10.1 At any time before the **INCIDENT** did you have complaints or injuries that involved the same part of your body claimed to have been injured in the **INCIDENT**? If so, for each state:

- (a) a description;
- (b) the dates it began and ended;
- (c) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** whom you consulted or who examined or treated you.

(Continued)



10.2 List all physical, mental, and emotional disabilities you had immediately before the **INCIDENT**. (You may omit mental or emotional disabilities unless you attribute any mental or emotional injury to the **INCIDENT**.)

10.3 At any time after the **INCIDENT**, did you sustain injuries of the kind for which you are now claiming damages. If so, for each incident state:

- (a) the date and the place it occurred;
- (b) the name, **ADDRESS**, and telephone number of any other **PERSON** involved;
- (c) the nature of any injuries you sustained;
- (d) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER** that you consulted or who examined or treated you;
- (e) the nature of the treatment and its duration.

#### 11.0 Other Claims and Previous Claims

11.1 Except for this action, in the last ten years have you filed an action or made a written claim or demand for compensation for your personal injuries? If so, for each action, claim, or demand state:

- (a) the date, time, and place and location of the **INCIDENT** (closest street **ADDRESS** or intersection);
- (b) the name, **ADDRESS**, and telephone number of each **PERSON** against whom the claim was made or action filed;
- (c) the court, names of the parties, and case number of any action filed;
- (d) the name, **ADDRESS**, and telephone number of any attorney representing you;
- (e) whether the claim or action has been resolved or is pending.

11.2 In the last ten years have you made a written claim or demand for worker's compensation benefits? If so, for each claim or demand state:

- (a) the date, time, and place of the **INCIDENT** giving rise to the claim;
- (b) the name, **ADDRESS**, and telephone number of your employer at the time of the injury;
- (c) the name, **ADDRESS**, and telephone number of the worker's compensation insurer and the claim number;
- (d) the period of time during which you received worker's compensation benefits;
- (e) a description of the injury;
- (f) the name, **ADDRESS**, and telephone number of any **HEALTH CARE PROVIDER** that provided services;
- (g) the case number at the Worker's Compensation Appeals Board.

#### 12.0 Investigation — General

12.1 State the name, **ADDRESS**, and telephone number of each individual:

- (a) who witnessed the **INCIDENT** or the events occurring immediately before or after the **INCIDENT**;
- (b) who made any statement at the scene of the **INCIDENT**;
- (c) who heard any statements made about the **INCIDENT** by any individual at the scene;

(d) who **YOU** OR **ANYONE ACTING ON YOUR BEHALF** claim has knowledge of the **INCIDENT** (except for expert witnesses covered by Code of Civil Procedure section 2034).

12.2 Have **YOU** OR **ANYONE ACTING ON YOUR BEHALF** interviewed any individual concerning the **INCIDENT**? If so, for each individual state:

- (a) the name, **ADDRESS**, and telephone number of the individual interviewed;
- (b) the date of the interview;
- (c) the name, **ADDRESS**, and telephone number of the **PERSON** who conducted the interview.

12.3 Have **YOU** OR **ANYONE ACTING ON YOUR BEHALF** obtained a written or recorded statement from any individual concerning the **INCIDENT**? If so, for each statement state:

- (a) the name, **ADDRESS**, and telephone number of the individual from whom the statement was obtained;
- (b) the name, **ADDRESS**, and telephone number of the individual who obtained the statement;
- (c) the date the statement was obtained;
- (d) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original statement or a copy.

12.4 Do **YOU** OR **ANYONE ACTING ON YOUR BEHALF** know of any photographs, films, or videotapes depicting any place, object, or individual concerning the **INCIDENT** or plaintiffs injuries? If so, state:

- (a) the number of photographs or feet of film or videotape;
- (b) the places, objects, or persons photographed, filmed, or videotaped;
- (c) the date the photographs, films, or videotapes were taken;
- (d) the name, **ADDRESS**, and telephone number of the individual taking the photographs, films, or videotapes;
- (e) the name, **ADDRESS**, and telephone number of each **PERSON** who has the original or a copy.

12.5 Do **YOU** OR **ANY ONE ACTING ON YOUR BEHALF** know of any diagram, reproduction, or model of any place or thing (except for items developed by expert witnesses covered by Code of Civil Procedure section 2034) concerning the **INCIDENT**? If so, for each item state:

- (a) the type (i.e., diagram, reproduction, or model);
- (b) the subject matter;
- (c) the name, **ADDRESS**, and telephone number of each **PERSON** who has it.

12.6 Was a report made by any **PERSON** concerning the **INCIDENT**? If so, state:

- (a) the name, title, identification number, and employer of the **PERSON** who made the report;
- (b) the date and type of report made;
- (c) the name, **ADDRESS**, and telephone number of the **PERSON** for whom the report was made.

12.7 Have **YOU** OR **ANY ONE ACTING ON YOUR BEHALF** inspected the scene of the **INCIDENT**? If so, for each inspection state:

(Continued)

(a) the name, ADDRESS, and telephone number of the individual making the inspection (except for expert witnesses covered by Code of Civil Procedure section 2034);

(b) the date of the inspection.

### 13.0 Investigation — Surveillance

13.1 Have YOU OR ANYONE ACTING ON YOUR BEHALF conducted surveillance of any individual involved in the INCIDENT or any party to this action? If so, for each surveillance state:

(a) the name, ADDRESS, and telephone number of the individual or party;

(b) the time, date, and place of the surveillance;

(c) the name, ADDRESS, and telephone number of the individual who conducted the surveillance.

13.2 Has a written report been prepared on the surveillance? If so, for each written report state

(a) the title;

(b) the date;

(c) the name, ADDRESS, and telephone number of the individual who prepared the report;

(d) the name, ADDRESS, and telephone number of each PERSON who has the original or a copy.

### 14.0 Statutory or Regulatory Violations

14.1 Do YOU OR ANYONE ACTING ON YOUR BEHALF contend that any PERSON involved in the INCIDENT violated any statute, ordinance, or regulation and that the violation was a legal (proximate) cause of the INCIDENT? If so, identify each PERSON and the statute, ordinance, or regulation.

14.2 Was any PERSON cited or charged with a violation of any statute, ordinance, or regulation as a result of this INCIDENT? If so, for each PERSON state:

(a) the name, ADDRESS, and telephone number of the PERSON;

(b) the statute, ordinance, or regulation allegedly violated;

(c) whether the PERSON entered a plea in response to the citation or charge and, if so, the plea entered;

(d) the name and ADDRESS of the court or administrative agency, names of the parties, and case number.

### 15.0 Special or Affirmative Defenses

15.1 Identify each denial of a material allegation and each special or affirmative defense in your pleadings and for each:

(a) state all facts upon which you base the denial or special or affirmative defense;

(b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of those facts;

(c) identify all DOCUMENTS and other tangible things which support your denial or special or affirmative defense, and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT.

### 16.0 Defendant's Intentions — Personal Injury

[See Instruction 2(c)]

16.1 Do you contend that any PERSON, other than you or plaintiff, contributed to the occurrence of the INCIDENT or the injuries or damages claimed by plaintiff? If so, for each PERSON:

(a) state the name, ADDRESS, and telephone number of the PERSON;

(b) state all facts upon which you base your contention;

(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts;

(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.2 Do you contend that plaintiff was not injured in the INCIDENT? If so:

(a) state all facts upon which you base your contention;

(b) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts;

(c) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.3 Do you contend that the injuries or the extent of the injuries claimed by plaintiff as disclosed in discovery proceedings thus far in this case were not caused by the INCIDENT? If so, for each injury:

(a) identify it;

(b) state all facts upon which you base your contention;

(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts;

(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.4 Do you contend that any of the services furnished by any HEALTH CARE PROVIDER claimed by plaintiff in discovery proceedings thus far in this case were not due to the INCIDENT? If so:

(a) identify each service;

(b) state all facts upon which you base your contention;

(c) state the names, ADDRESSES, and telephone numbers of all PERSONS who have knowledge of the facts;

(d) identify all DOCUMENTS and other tangible things that support your contention and state the name, ADDRESS, and telephone number of the PERSON who has each DOCUMENT or thing.

16.5 Do you contend that any of the costs of services furnished by any HEALTH CARE PROVIDER claimed as damages by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:

(a) identify each cost;

(Continued)

- (b) state all facts upon which you base your contention;
- (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
- (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- 16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:
- (a) identify each part of the loss;
  - (b) state all facts upon which you base your contention;
  - (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
  - (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- 16.7 Do you contend that any of the property damage claimed by plaintiff in discovery proceedings thus far in this case was not caused by the **INCIDENT**? If so:
- (a) identify each item of property damage;
  - (b) state all facts upon which you base your contention;
  - (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
  - (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- 16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:
- (a) identify each cost item;
  - (b) state all facts upon which you base your contention;
  - (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of the facts;
  - (d) identify all **DOCUMENTS** and other tangible things that support your contention and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

- 16.9 Do **YOU OR ANY ONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:
- (a) the source of each **DOCUMENT**;
  - (b) the date each claim arose;
  - (c) the nature of each claim;
  - (d) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

- 16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure section 2034)? If so, for each plaintiff state:
- (a) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
  - (b) a description of each **DOCUMENT**;
  - (c) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

#### 17.0 Responses to Request for Admissions

- 17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:
- (a) state the number of the request;
  - (b) state all facts upon which you base your response;
  - (c) state the names, **ADDRESSES**, and telephone numbers of all **PERSONS** who have knowledge of those facts;
  - (d) identify all **DOCUMENTS** and other tangible things that support your response and state the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT** or thing.

#### 20.0 How the Incident Occurred — Motor Vehicle

- 20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).
- 20.2 For each vehicle involved in the **INCIDENT**, state:
- (a) the year, make, model, and license number;
  - (b) the name, **ADDRESS**, and telephone number of the driver;
  - (c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;
  - (d) the name, **ADDRESS**, and telephone number of each registered owner;
  - (e) the name, **ADDRESS**, and telephone number of each lessee;
  - (f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder;
  - (g) the name of each owner who gave permission or consent to the driver to operate the vehicle.
- 20.3 State the **ADDRESS** and location where your trip began, and the **ADDRESS** and location of your destination.
- 20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.
- 20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT**.

(Continued)



20.6 Did the **INCIDENT** occur at an intersection? If so, describe all traffic control devices, signals, or signs at the intersection.

20.7 Was there a traffic signal facing you at the time of the **INCIDENT**? If so, state:

- (a) your location when you first saw it;
- (b) the color;
- (c) the number of seconds it had been that color;
- (d) whether the color changed between the time you first saw it and the **INCIDENT**.

20.8 State how the **INCIDENT** occurred, giving the speed, direction, and location of each vehicle involved:

- (a) just before the **INCIDENT**;
- (b) at the time of the **INCIDENT**;
- (c) just after the **INCIDENT**.

20.9 Do you have information that a malfunction or defect in a vehicle caused the **INCIDENT**? If so:

- (a) identify the vehicle;
- (b) identify each malfunction or defect;
- (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect;
- (d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

20.10 Do you have information that any malfunction or defect in a vehicle contributed to the injuries sustained in the **INCIDENT**? If so:

- (a) identify the vehicle;
- (b) identify each malfunction or defect;
- (c) state the name, **ADDRESS**, and telephone number of each **PERSON** who is a witness to or has information about each malfunction or defect;
- (d) state the name, **ADDRESS**, and telephone number of each **PERSON** who has custody of each defective part.

20.11 State the name, **ADDRESS**, and telephone number of each owner and each **PERSON** who has had possession since the **INCIDENT** of each vehicle involved in the **INCIDENT**.

## 50.0 Contract

50.1 For each agreement alleged in the pleadings:

- (a) identify all **DOCUMENTS** that are part of the agreement and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
- (b) state each part of the agreement not in writing, the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to that provision, and the date that part of the agreement was made;
- (c) identify all **DOCUMENTS** that evidence each part of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
- (d) identify all **DOCUMENTS** that are part of each modification to the agreement, and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**;
- (e) state each modification not in writing, the date, and the name, **ADDRESS**, and telephone number of each **PERSON** agreeing to the modification, and the date the modification was made;
- (f) identify all **DOCUMENTS** that evidence each modification of the agreement not in writing and for each state the name, **ADDRESS**, and telephone number of each **PERSON** who has the **DOCUMENT**.

50.2 Was there a breach of any agreement alleged in the pleadings? If so, for each breach describe and give the date of every act or omission that you claim is the breach of the agreement.

50.3 Was performance of any agreement alleged in the pleadings excused? If so, identify each agreement excused and state why performance was excused.

50.4 Was any agreement alleged in the pleadings terminated by mutual agreement, release, accord and satisfaction, or novation? If so, identify each agreement terminated and state why it was terminated including dates.

50.5 Is any agreement alleged in the pleadings unenforceable? If so, identify each unenforceable agreement and state why it is unenforceable.

50.6 Is any agreement alleged in the pleadings ambiguous? If so, identify each ambiguous agreement and state why it is ambiguous.

(End)

PROOF OF SERVICE

COMMONWEALTH OF  
MASSACHUSETTS  
BARNSTABLE COUNTY

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

On January 06, 2003, I served the within: **FORM INTERROGATORIES SET ONE DIRECTED TO DEFENDANT ARAKAL BY PLAINTIFF MACHADO.**

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

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

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

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

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

CO-COUNSEL FOR PLAINTIFF

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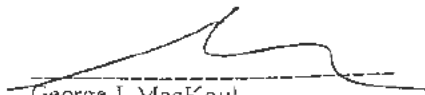
COUNSEL FOR DEFENDANTS DIOCESE OF STOCKTON,  
DEFENDANTS BLAIRE, ILLO AND RYAN.

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

COUNSEL FOR DEFENDANT ARAKAL

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

Executed on January 6, 2003 at Falmouth, Massachusetts.

  
George J. MacKoul

# EXHIBIT B

1 MICHAEL D. COUGHLAN SBN 124398  
2 COUGHLAN & O'ROURKE LLP  
3 3031 W. MARCH LN., SUITE 210 WEST  
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5 (209)952-3878

6 Attorneys for Defendant FR. FRANCIS ARAKAL JOSEPH

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

10 KATHLEEN MACHADO, et al,  
11 Plaintiffs,

12 vs.

13 FR. JOSEPH ILLO, et al,  
14 Defendants

) Case No.: CV018440

)  
) **RESPONSES TO FORM**  
) **INTERROGATORIES**

15  
16  
17 PROPOUNDING PARTY: Plaintiff, **RACHEL LOMAS** by her Guardian Ad  
18 Litem, **KATHLEEN MACHADO**

19 RESPONDING PARTY: Defendant, **FR. FRANCIS ARAKAL JOSEPH**

20 SET NUMBER: **One**

21 These responses to form interrogatories are served pursuant to Code of Civil Procedure  
22 section 2030. In answering these form interrogatories, the Propounding Party is being furnished  
23 with such information as is presently available to this Responding Party, which may not be  
24 entirely reliable since discovery is still continuing. Since discovery is still continuing and  
25 information is still being ascertained, these responses may not be admissible in evidence. This  
26 Responding Party expressly reserves the right to introduce at trial evidence that is presently



1 unknown to this Responding Party and/or is discovered subsequent to the date of these  
2 responses. Further, this Responding Party expressly reserves the right to amend these responses  
3 without motion at any time, including up to and at the trial of this matter.

4 **GENERAL OBJECTION NUMBER 1**

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

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

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

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

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

**GENERAL OBJECTION NUMBER 2**

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

1  
2 This Responding Party objects to these interrogatories to the extent that they seek  
3 privileged, confidential and undiscoverable information that is absolutely protected by the  
4 attorney-client relationship and/or the attorney work product doctrine.

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

11 **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.

19 For the purposes of these responses, the term "incident" shall be construed by this  
20 Responding Party to mean and specifically refer to the incident of July 25, 2001.

21 **RESPONSES TO FORM INTERROGATORIES**

22 1.1 Attorney Michael D. Coughlan.

23 2.1 Francis Arakal Joseph.

24 2.2 India, November 28, 1953.

25 2.5 (a) 1813 Oakdale Road, Modesto, California, for 23 months.

26 (b) 19 Fallett St., Lemmore, California, for 14 months. Prior to that I resided at the  
Sacred Heart Philosophy College in Aluva, India.

1  
2 2.6 (a) St. Joseph's Parish, Diocese of Stockton, Modesto, California for 23 months.  
3 (b) St. Peter's Parish, Diocese of Fresno, Lemoore, California for 14 months. Before that I  
4 was on the teaching staff at Sacred Heart Philosophy College in Aluva India.

5 2.7 Graduated from St. Peter's High School in Kumbalanghy, India in 1969. Received B.A.  
6 Degree form U.G. College, Aluva India, 1983. Attended St. Joseph's Pontifical Institute  
7 of Philosophy and Theology in Aluva, India from 1972-79. Master of Arts, Unversity of  
8 Kerala, India, 1989.

9 2.8 No.

10  
11 2.11 Objection on the grounds that the question calls for a legal opinion and conclusion.  
12 Without waiving the objection, defendant responds that he is uncertain as to the exact  
13 dates of the visits that he made to plaintiffs' residence, which appear to form the basis of  
14 the allegations in plaintiffs' complaint. Without admitting that any incident as described  
15 in plaintiffs' complaint ever occurred, defendant responds that his most recent visit to  
16 plaintiffs' residence was made to perform a blessing on the home.

17 3.5 No.

18 4.1 Defendant had no such insurance policy.

19  
20 4.2 Defendant is not self-insured.

21 12.1 Defendant objects on the grounds that the question is vague and ambiguous to the extent  
22 that it does not define which of the alleged incidents described in the complaint it seeks  
23 information concerning. Defendant further objects that the question seeks information  
24 protected by the attorney client privilege and/or attorney work product doctrine. Without  
25 waiving the objection defendant responds that the only persons present at the time of his  
26 visits to plaintiffs' residence included defendant and plaintiffs. With regard to the alleged

1 incident described in the complaint as occurring on September 11, 2001, persons who  
2 may have witnessed the alleged events and or those occurring immediately after, and  
3 either made or overheard statements would include plaintiff Amber Lomas, defendants  
4 Ilo and Joseph, and possibly others present in the Parish office including Jackie Tucker,  
5 Mary Mullins, Owen Kummerle, Rosario Hernandez, Rose Wyeth, Yvonne McLoughlin.

6 12.2 Defendant objects on the grounds that the question is vague and ambiguous. Defendant  
7 further objects that question seeks information protected by the attorney client privilege  
8 and/or attorney work product doctrine. Without waiving the objections, Canon Lawyers  
9 of the Diocese of Stockton may have interviewed individuals concerning the incidents  
10 identified in the complaint, however, I am not aware of who may have been interviewed  
11 or when such interviews may have been conducted.

12 12.3 Defendant objects on the grounds that the question is vague and ambiguous. Defendant  
13 further objects that the question seeks information protected by the attorney client  
14 privilege and/or attorney work product doctrine. Without waiving the objections, my  
15 attorney is in possession of copies of statements given by members of the St. Joseph's  
16 Parish staff, Jackie Tucker, Mary Mullins, Owen Kummerle and Rosario Hernandez.

17 12.4 Defendant objects on the grounds that the question is vague and ambiguous. Defendant  
18 further objects that the question seeks information protected by the attorney client  
19 privilege and/or attorney work product doctrine. Without waiving the objections, no.

20 12.5 Defendant objects on the grounds that the question is vague and ambiguous and also  
21 seeks information protected by the attorney client privilege and/or attorney work product  
22 doctrine. Without waiving the objections, no.

23 12.6 Defendant objects on the grounds that the question is vague and ambiguous and also that  
24 it seeks information protected by the attorney client privilege and/or attorney work  
25 product doctrine. Without waiving the objection, it is defendant's understanding that the  
26 Hughson Police Department may have made a report and that a report may have been

1 made by Canon Lawyers of the Diocese of Stockton, however, defendant has never seen  
2 any such report

3  
4 13.1 Defendant is not aware of any such surveillance.

5 13.2 Not applicable.

6  
7 14.1 Defendant objects on the grounds that the question seeks information protected by the  
8 attorney work product doctrine. Without waiving the objection, defendant does not at this  
9 so contend, however, discovery has just commenced, and defendant may amend this  
10 response based upon later discovered information.

11 14.2 Defendant is aware of no such charge or citation.

12  
13 15.1 This responding party objects to this interrogatory on the ground that it requests  
14 information protected by the attorney client privilege and/or attorney work product  
15 doctrine. As a matter of proper pleading and practice, responding party has pled certain  
16 affirmative defenses and will not waive them here. This responding party further objects  
17 to this interrogatory as it purports to acquire what amounts to a verified response to an  
18 unverified complaint and also calls for this responding party to speculate as to what are  
19 considered material allegations in the pleadings. This responding party further objects to  
20 this interrogatory as it is premature and responding party has not yet conducted  
21 discovery.

22 17.1 (a) 1, 2, 3, 4, 5, 6, 7, 8, 9, 11, 12, 14, 15, 16, 17, 18, 19, 19, 20.

23 (b)(c)(d) As to request number 1, defendant did not frequently ask plaintiff Amber Lomas  
24 if he could come over to her house for dinner. Persons with knowledge of this would  
25 include the answering defendant and the plaintiff. Defendant is not aware of any  
26 documents that would support this response.

As to request number 2, defendant did not ask plaintiff if she wanted to feel his stomach,  
nor did he begin pulling down his pants. Persons with knowledge of this would include

1 the plaintiffs this answering defendant and possibly the Hughson Police Department and  
2 Stanislaus County District Attorney's Office. Defendant is not aware of the specific dates  
3 of visits to plaintiffs' home, and cannot admit to the date of June 28, 2001. Defendant is  
4 not aware of any documents that would support this response other than any reports that  
5 may have been generated by the above reference governmental agencies.

6 As to request number 3, defendant denies that he ever made the statement attributed to  
7 him in the request. People with knowledge of this alleged event would include this  
8 responding defendant, the plaintiffs and possibly the Hughson Police Department and  
9 The Stanislaus County District Attorney's Office. Defendant is aware of no documents  
10 that would support this response other than reports that may have been generated b the  
11 above referenced governmental agencies. Defendant is not able to admit as to the specific  
12 dates of any visit to the plaintiffs' home.

13 As to request number 4, defendant denies that he asked if he could bless plaintiff's home.  
14 Persons with knowledge of this would include the responding defendant and the  
15 plaintiffs. Defendant is not able to admit as to the specific date that he blessed the  
16 plaintiffs' home at the request of the plaintiffs. Defendant is not aware of any documents  
17 that support this response.

18 As to request number 5, defendant is not able to admit to the specific date that he went to  
19 the plaintiffs' home at their request for the purpose of blessing it. Persons with  
20 knowledge of this would include plaintiffs and the responding defendant. Defendant is  
21 aware of no documents that would support this response.

22 As to request number 6, defendant is not able to admit to the specific date of July 25,  
23 2001.

24 As to request number 7, defendant did not commit these alleged acts. Persons with  
25 knowledge of this include this defendant, plaintiffs and members of the Hughson Police  
26 and Stanislaus County District Attorney's Office and possibly Canon lawyers who may  
have investigated on behalf of the Diocese of Stockton. Documents in support of this  
would include any reports of investigations conducted by the above noted governmental  
agencies, and or the Canon lawyers.

As to request number 8, defendant did not commit these alleged acts. Persons with  
knowledge of this include defendant, plaintiffs and members of the Hughson Police

1 Department and Stanislaus County Distrcit Attorney's office and possibly Canon lawyers  
2 who investigated on behalf of the Diocese of Stockton. Documents in support of this  
3 response would include any reports of investigations conducted by the above noted  
4 governmental agencies and/or the Canon Lawyers.

5 As to request number 9, defendant did not commit any such acts as described in the  
6 request.

7 As to request number 11, defendant had no notice of any such allegations.

8 As to request number 12, Father Illo made no such communication to responding  
9 defendant on September 11, 2001. Persons with knowledge of these facts would include  
10 Fr. Illo and this responding defendant. Defendant is aware of no documents that would  
11 support this response.

12 As to request number 14, defendant made no such communication with plaintiff Amber  
13 Lomas concerning allegations relating physical contact with the breasts of plaintiff  
14 Rachel Lomas. Persons with knowledge of this would include responding defendant,  
15 plaintiff, Amber Lomas and possibly Fr. Illo. Defendant is aware of no documents that  
16 would support this response.

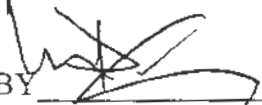
17 As to request numbers 15-19, this responding party objects to this interrogatory on the  
18 grounds that it seeks information protected by the attorney client and/or attorney work  
19 product doctrine. As a matter of proper pleading and practice, responding party has pled  
20 through counsel certain affirmative defenses and will not waive them here. This  
21 responding party further objects to this interrogatory as it purports to acquire what  
22 amounts to a verified response to an unverified complaint, and as such constitutes an  
23 abuse of the discovery process.

24 As to request number 20, defendant denies making any such specific comment to Ms.  
25 Shields and specifically during a meeting with Fr Illo. Persons with knowledge of this  
26 would include responding defendant, Fr. Illo and Ms. Elaine Shields. Defendant is aware  
of no documents that support this response.

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DATED: 2/8/0

GOUGHLAN & O'ROURKE LLP

BY 

MICHAEL D. COUGHLAN  
Attorneys for defendant  
Fr. Francis Arakal Joseph

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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 Form Interrogatories, 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



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

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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

On February 7, 2003, I served the attached:  
Responses of Defendant Fr. Francis Arakal Joseph to Plaintiff's Form Interrogatories, Set One

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

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

Anthony Boskovich, Esq.  
Law Offices of Anthony Boscovich  
28 N. First Street, 6<sup>th</sup> Floor  
San Jose, CA 95113

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

BY MAIL:

[x] I caused such envelope to be deposited in the mail at Stockton, California. I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing. It is deposited with the U.S. 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.

  
Mary L. Coughlan

**EXHIBIT C**

# SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION  
ATTORNEYS AND COUNSELORS AT LAW

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909-682-2021  
Fax: 909-682-7341  
355 West Las Palmas Avenue  
Patterson, California 95363  
209-892-2233  
Fax: 209-892-2572

Please reply to: FALMOUTH OFFICE

March 20, 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

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

Dear Mr. Coughlan:

I have recently received reviewed discovery responses to our client's discovery requests concerning the above-entitled matter mailed to this office from California on February 7, 2003. The responses propounded by your clients are inadequate and deficient under the code and I am requesting that your office meet and confer regarding the issues set forth in this letter.

As you know, the code requires that a party who responds to interrogatories must fulfill two separate and distinct duties, when providing responses an opposing party.

The first duty is the *duty to obtain information*. "If the responding party does not personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but *shall make a reasonable effort to obtain information* by inquiry to other natural persons or organizations, except where that information is equally available to the propounding party" C.C.P. Section 2030 (f) (1) (emphasis added), also see *Deyo v. Kilbourne* (1979) 84 CA 3d 771, 783). In fulfilling a party's duty to "obtain

EXHIBIT

information”, case law is specific: *A party must obtain information from sources under the parties control.* “A party cannot plead ignorance to information which can be obtained from sources under his control” *Weil and Brown, Civil Procedure Before Trial*, supra at Section 8:1054, citing *Deyo v. Kilbourne*, supra at 782.

The second duty a responding party has is the “*duty to provide complete answers*”. Each answer given in a parties response must be “as complete and straightforward as the information reasonably available to the responding party permits. *If an interrogatory cannot be answered completely, it shall be answered to the extent possible.*” C.C. P. 2030 (f) (1) (emphasis added). Evasive answers are contrary to the rule of law, and are therefore improper. “An answer which supplies only part of the information requested is insufficient.” See, *Weil and Brown, Civil Procedure Before Trial*, supra, Section 8:1048. “*Nor may a party, by deftly-worded conclusion answers, evade a series of explicit questions.*” See, *Deyo v. Kilbourne*, supra at 771, 783 (emphasis added). “Interrogatories should not be read by the recipient in an artificial manner designed to assure that answers are not truly responsive” See, *Weil and Brown, Civil Procedure Before Trial*, supra at Section 8:1048. “*Parties must state the truth, and nothing but the truth in answering written interrogatories.*” See, *Union Bank v. Superior Court* (1995) 31 CA 4<sup>th</sup> 573, 580 (emphasis added).

More specifically, your client’s answers to the following interrogatories have breach one or more of the above stated duties for the following reasons:

#### DEFENDANT FR. FRANCIS ARAKAL’S RESPONSES TO FORM INTERROGATORIES, SET ONE

**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 know 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 of or your client of your obligation under the code to answer each and every interrogatory to the fullest extent possible at the time they are responded to. Finally these questions are *Judicially Approved Form Interrogatories* and I know of no case law, which allows or

upholds objections to the form of the question as asked.<sup>1</sup> In fact case law is to the contrary: Objections to the entire set of interrogatories will not be sustained if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811. Since these are judicial approved interrogatories, a judge would surely sustain 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 interrogatories.

**General Objection No. 2:** (Summarized) "The Responding Party Objects to all the Form Interrogatories 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 Judicially Approved Form Interrogatories* by the way they are phrased and/or interpreted by you invade the attorney client privilege? If so please provide the legal authority to support this blanket objection. Again, I object to this blanket objection, which must be stated in each an every response, not by way of general objections. Case law is clear: Objections to the entire set of interrogatories will not be sustained if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811

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 interrogatories.

**General Objection No. 3:** "THIS RESPONDING PARTY OBJECTS TO THESE INTERROGATORIES 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 this set of form interrogatories. This would hopefully allow you

---

<sup>1</sup> I caveat this by noting that the only case to date addressing a valid objection to a form interrogatory is the case of *Nacht v. Superior Court* (cite omitted) which addressed the invasion of the attorney work product doctrine as to Form Interrogatory 12.1.

to provide clearer supplemental responses. Perhaps we can discuss this in more detail when we meet and confer on this issue.

**Form Interrogatory No. 2.1: State:**

- (a) Your name;
- (b) Every name you have used in the past;
- (c) The date you used each name;

**Response to Form Interrogatory No. 2.1: Francis Arakal Joseph**

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** You failed to provide a complete answer to this interrogatory. Is this because you object to this interrogatory because it violates the attorney client privilege and the attorney work product doctrine? Is this because you have not yet completed your investigation of this issue? According to your client's response to interrogatory 2.2, your client is a native of a foreign country. He is also a priest. Sometimes clergy take different names after they are ordained. Sometimes foreign nationals prior to becoming U.S. citizens change their name. We need to know and are entitled to know all prior aliases. I also do not believe that your clients identity is protected by the attorney client privilege or the attorney work product doctrine. Your response is incomplete. Please provide a supplemental, verified response to this interrogatory.

**Form Interrogatory No. 2.11: At the time of the INCIDENT were you acting as an agent or employee for any PERSON? If so, state:**

- (a) The name, ADDRESS, and telephone number of that PERSON;
- (b) A description of your duties.

**Response to Form Interrogatory No. 2.11:** Objection on the grounds that the question calls for a legal opinion and conclusion. Without waiving the objection, defendant responds that he is uncertain as to the exact dates of the visits that he made to plaintiffs' residence, which appear to form the basis of the allegations in plaintiffs' complaint. Without admitting that any incidents as described in plaintiffs' complaint ever occurred, defendant responds that his most recent visit to plaintiffs residence was made to perform a blessing on the home.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** The interrogatory is not asking for a legal conclusion or opinion. No established case law supports this objection. In fact case law states that this type of objection is improper. Case holding that responses to interrogatories that use objections which states "calls for opinion or conclusion" as *improper*. West Pico Furn. Co. v. Sup.Ct. (1961) 56 Cal.2d 407, 416-417, 15 Cal.Rptr. 119, 123.

If authority to the contrary exists, I would be happy to review it. The response by its own admission, states that your client did visit plaintiffs' residence to perform a blessing on the home and other visits (clearly identified in the complaint). We believe we are entitled to know, as to each and every visit alleged in the complaint, if in fact he was acting as an agent and/or employee of the any of the other named defendants.

In addition, I do not think this question is subject to your general objection No. 1, (further investigation and discovery is not necessary to be able to answer this interrogatory completely) or general objection No. 2: (your clients employment status at the time he allegedly molested these children is certainly not a subject of attorney client privilege) or general objection No. 3 (confusion about which incident we are talking about as the complaint only alleges two incidents, one in July 2001 and September 11, 2001).

Based on the foregoing, I would appreciate it if you would provide further supplemental, verified responses to this interrogatory.

**Form Interrogatory 12.2:** Have YOU OR ANYONE ACTING ON YOUR BEHALF interviewed any individual concerning the incident? If so, for each individual state:

- (a) the name, ADDRESS, and telephone number of the individual interviewed;
- (b) the date of the interview;
- (c) the name, ADDRESS, and telephone number of the person who conducted the interview;

**Response to Form Interrogatory 12.2:** Defendant objects on the grounds that the question is vague and ambiguous. Defendant further objects that the question seeks information protected by the attorney client privilege and/or the attorney work product doctrine. Without waiving these objections, Canon Lawyers of the Diocese of Stockton may have interviewed individuals concerning the incidents identified in the complaint, however, I am not aware of who may have been interviewed or when such interviews may have been conducted.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** First case law frowns upon the improper objections stated. Objections which state the question is "ambiguous." Courts generally do not sustain this kind of objection unless the question is totally unintelligible. The interrogatories propounded are judicially approved. The answering party owes a duty to respond in good faith as best he or she can. See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has disclosed all information available to him" (emphasis added)

Our investigation has revealed that not only a criminal investigation but a Diocese investigation was conducted regarding the allegations stated in the complaint. Certainly your client was a part of that investigation. The diocese may have produced reports as you so state, and, since the responding party is an employee of the defendant diocese,



(which can only be assumed by your failure to deny the same in your response to interrogatory 12.2) an adverse party, he has the ability to inquire into the identity of these reports which are not equally available to plaintiff. The law is clear. "If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make a reasonable effort to obtain information by inquiry to other natural persons or organizations, except where that information is equally available to the propounding party" C.C.P. Section 2030 (f) (1) (emphasis added). Further there is no cross complaint on file for indemnity, contribution or comparative fault. As you client is not adverse to the other defendants and was and still is an employee of the church, he has access this information. Please supplement this interrogatory with a verified, complete and non evasive response.

**Form Interrogatory 12.3:** Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained a written record statements from any individual concerning INCIDENT? If so, for each statements state:

- (a) the name, address and telephone number of the individual from in the statement was obtained;
- (b) the name, address and telephone number of the individual obtained a statement;
- (c) the date a statement was obtained;
- (d) the name, address and telephone number of each person who has the original statement or a copy.

**Response to Form Interrogatory 12.3:** Defendant objects on the grounds that the question is vague and ambiguous. Defendant further objects that the question seeks information protected by the attorney client privilege and/or attorney work product doctrine. Without waiving the objections, my attorney is in possession of copies of statements given by members of the St. Joseph's Parish staff, Jackie Tucker, Mary Mullins, Owen Kummerle and Rosario Hemandez.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

The interrogatory is not vague and ambiguous as the Judicial Counsel of California authorizes the form of the question. Case law frowns upon the improper objections stated. Objections which state the question is "ambiguous, confusing or overbroad" have been classified as improper objections by the courts of this state. Courts generally do not sustain this kind of objection unless the question is totally unintelligible. [citation listed above]. In addition, there is no attorney client privilege as to communications between independent witnesses or persons identified as Jackie Tucker, Mary Mullins, Owen Kummerle and Rosario Hemandez. These individuals are not represented by counsel for defendant Arakal, the responding party to these interrogatories. The privilege applies only to confidential communications between lawyer and client. There is no protection

for conversations in the presence of others whose presence was not essential to further the client's interests. Ca Evid § 952.

Further the responding party has a duty to provide complete responses to each and every subpart of this interrogatory, which was not done. Had the information been provided, one could move on to the next step in the analysis which is who acquired the statement? If it was taken by the other co-defendants then the work product doctrine does not apply, as to counsel for defendant Arakal. Nor can an attorney later "by retroactive adoption convert the independent work of another, already performed, into his own." *Jasper Construction, Inc. v. Foothill Junior College Dist.* (1979) 91 Cal.App.3d 1, 16, 153 Cal.Rptr. 767, 776 (internal quotes omitted).

If the statements identified were taken by counsel for Arakal, then they are still not, per se protected by this privilege as so stated. If the attorney's notes of a witness interview merely record what the witness said, they are not work product (they are only "evidentiary.") If the notes also reflect the attorney's (or his or her investigator's) impressions, conclusions, or opinions regarding the witness, at least those portions of the notes are absolutely protected from discovery. *Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal.App.3d 626, 647-648, 151 Cal.Rptr. 399, 410] Which is it? And, where the witness' statement and the attorney's impressions are inextricably intertwined, then absolute protection is afforded to all portions of the attorney's notes. *Rodriguez v. McDonnell Douglas Corp.*, supra, 87 Cal.App.3d at 647-648, 151 Cal.Rptr. at 410.

As the response is evasive, one is left to speculate if the privilege even applies. I would like to meet and confer on this issue or in the alternative please provide complete responses to this interrogatory in a verified, supplemental response.

**Form Interrogatory No. 12.6:** Was a report made by any person concerning incident? If so, state:

- (a) the name, title, identification number, and employer of the person who made the report;
- (b) the date and type of report made;
- (c) the name, address and telephone number of the person for in the report was made.

**Response to Form Interrogatory 12.6:** Defendant objects on the grounds that the question is vague and ambiguous and also that it seeks information protected by the attorney client privilege and/or attorney work product doctrine. Without waiving the objection, it is defendant's understanding that the Hughson Police Department may have made a report and that a report may have been made by Canon Lawyers of the Diocese of Stockton, however, defendant has never seen any such report.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** The vague and ambiguous objections are improper, as these are judicially approved form interrogatories and case law support our argument to the contrary. There is no attorney client privilege to reports generated by third parties and therefore not direct communications between counsel and the responding party. Work product does not apply unless the reports contain counsels' mental impressions. The response violates counsel and clients duty to answer completely the interrogatory stated and to conduct a reasonable investigation to ascertain the information necessary to answer the question. Please provide a supplemental verified response.

**Form Interrogatory 13.1:** Have YOU OR ANYONE ACTING ON YOUR BEHALF conducted surveillance of any individual involved in the INCIDENT or any party to this action? If so for each surveillance state:

- (a) the name, ADDRESS and telephone number of the individual or party;
- (b) the time, date and place of he surveillance;
- (c) the name, ADDRESS, and telephone number of the individual who conducted the surveillance.

**Response to Form Interrogatory 13.1:** Defendant is not aware of any such surveillance.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** The answer is evasive. As so stated in response to form interrogatory 1.0, these interrogatories were prepared by counsel. "...unlike depositions, interrogatory answers are prepared with the assistance of counsel. Therefore, a broader duty of response is justified" See *Weil and Brown, Civil Procedure Before Trial* Chapter 8 page 8F-36, Section 8:1053. That broader duty includes any surveillance instituted by defense counsel and not told to the client he represents. Please provide a supplemental response answering all subpart questions or denying counsel-instituting surveillance.

**Form Interrogatory No. 15.1:** Identify each and every denial of a material allegation and each special or affirmative defense in your pleadings and for each:

- (a) state all facts upon which you base the denial or special or affirmative defense;
- (b) state the names, ADDRESSES and telephone numbers of all PERSONS who have knowledge of those facts
- (c) Identify all DOCUMENTS and other tangible things which support your denial or special or affirmative defense, and state the name, ADDRESSES, and telephone number of the PERSON who has each DOCUMENT.

**Response to Form Interrogatory No. 15.1:** This responding party objects to this interrogatory on the ground that it requests information protected by the attorney client privilege and or the attorney work product doctrine. As a matter of proper pleading and practice, responding party has pled certain affirmative defenses and will not waive them here. This responding party further objects to this interrogatory as it purports to acquire what amounts to a verified response to an unverified complaint and also calls for this

responding party to speculate as to what are considered material allegations in the pleadings. This responding party further objects to this interrogatory as it is premature and responding party has not yet conducted discovery.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** This interrogatory is asking the responding party to substantiate each affirmative defense stated in their answer to the complaint. We are not asking that you waive a defense but would like to know what facts and evidence you have to support, in some cases, illogical defenses to this case. Some of the affirmative defenses allege that the molestation of the minor plaintiffs was a result of their own negligence, negligence of third parties, failure to mitigate the molestation, or that the claims are barred by the statute of limitations. Yet your other responses to request for admissions and interrogatories deny any molestation took place. This is illogical. Just as plaintiffs may be sanctioned for filing frivolous lawsuits, defendants may be sanctioned for asserting nonmeritorious cross-complaints or denials and defenses in their answers--e.g., answers containing dozens of affirmative defenses (waiver, estoppel, laches, unclean hands, etc.) for which there is no evidentiary support, please see or Ca Civ Pro § 128.7 (b) (1-3) requiring a party to not present an unmeritorious defense which will increase the cost of litigation. If you disagree with this line of argument, then please provide legal authority to support your objections of proper pleading practice, waiver and speculation. The responding party's response, which states that this interrogatory is premature, is without legal basis. An attorney in California cannot simply file a baseless complaint or baseless answer. As so stated in C.C.P. 128.7 (b) by presenting an answer to the court the attorney is certifying that "to the best of the persons knowledge, information, and belief, formed after an inquiry reasonable under the circumstances"...that it is not being presented for an improper purpose to harass or cause unnecessary delays and that the affirmative defenses have facts to support said defense. The argument that responding party has not had time to complete its investigation is also baseless. This is a molestation claim against the responding party, it is not a not a complex piece of litigation. As so state by the responding party the witnesses to the acts alleged are limited and the investigation, which defendant has had almost 6 months to complete is also baseless. Please provide a supplemental response to this interrogatory or provide authority to support your objections.

**Form Interrogatory No. 17.1:** asks for factual assertion to support each denial stated in the accompanying request for admissions.

**Responses to Request for Admissions No. 15-19 as well as the corresponding 17.1 interrogatory for No. 15-19.** Instead a boilerplate objection similar to the response to form Interrogatory 15.1 was made and for the previously stated arguments is also baseless. Please provide complete verified supplemental responses to the admissions and the corresponding 17.1 interrogatory.

## DEFENDANTS RESPONSES TO SPECIAL INTERROGATORIES SET NO.1

The General objections stated in the beginning of the responses to special interrogatories are identical to those used in the answers to the form interrogatories. Per case law they are improper objections and should be removed or sustained. Objections to the entire set of interrogatories will not be sustained if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811. We will ask that you withdraw them in any supplemental response.

In addition, most of the objections stated are boilerplate, illegal and without authority in support of the objections.

### **SPECIAL INTERROGATORY NO. 1:**

YOUR personal and professional telephone numbers used by YOU during the calendar year 2001

**RESPONSE TO SPECIAL INTERROGATORY NO.1:** This responding defendant objects to the question as calling for information that is privileged and protected by the defendant's right of privacy. Responding defendant further objects that the question is harassing, overbroad and calling for 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.

### **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

The identity of a telephone number used to contact and plaintiffs is not privileged information, and no authority to support an objection is given. As to the privacy objection, the identity of a telephone numbers does not fall in the general zone of privacy protection such as personal finances and or in some instances medical records. Even then privacy protection is qualified, not absolute. A "balancing" is required: i.e., the need for discovery in each case must be weighed against the interests sought to be protected by the privacy right recognized. The responding party provides no authority to support their objections. The harassing and overbroad objection is also designed to obstruct production of the information sought. How is asking for the identity of a telephone number used to prey on minor children not relevant to this case? How is this harassing? Please provide the information requested in a supplemental response.

### **SPECIAL INTERROGATORY NO. 3:**

The name and address of any internet provider YOU were subscribed to in the year 2001.

**RESPONSE:** This responding defendant objects to the question as calling for information that is privileged and protected by the defendant's right of privacy. Responding defendant further objects that the question is harassing, overbroad and

calling for 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.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** The identity of the respondents internet provider is can lead to relevant evidence regarding visits by the defendant to adult child pornography web sites, which would be relevant to prove or disprove that the defendant has a sexual predisposition toward children. The right to privacy objection is not supported by any case law.

**SPECIAL INTERROGATORY NO. 4:**

The names, addresses, and telephone numbers of all minors you spoke to on the telephone during the months of May through September 2001.

**RESPONSE:** This responding defendant objects to the question as calling for information that is privileged and protected by the defendant's right of privacy. Responding defendant further objects that the question is harassing, overbroad and calling for the discovery of information that is neither relevant to any issue in this matter nor reasonably calculated to the discovery of admissible evidence.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** Plaintiffs have evidence that defendant has a custom and practice of calling minors at home when there parents are not there. In addition the information is relevant to plaintiffs being able to contact and interview other minors who may have been molested by defendant but have not yet come forward. There is no right to privacy in disclosure of third party's telephone number, and as I understand the objection it is a first party privacy objection. The interrogatory is not harassing, nor is it overbroad, it only seeks the identity of other minors contacted by defendant. Please provide a supplemental response to this discovery.

**SPECIAL INTERROGATORY NO. 5:**

The names, addresses and telephone numbers of each and every employee, agent or representative of the Diocese of Stockton regarding the INCIDENT to whom you communicated or to whom YOU communicated any information regarding the INCIDENT.

**RESPONSE:** This responding defendant objects to the question as vague, ambiguous, compound and complex.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** The objections are improper. Courts generally do not sustain this kind ("ambiguous, confusing or overbroad") of objection unless the question is totally unintelligible. The answering party owes a duty to respond in good faith as best he or she can. See *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has disclosed all information available to him" The question is simply asking for the identity of any and all witnesses to the incidents stated in the complaint.

**SPECIAL INTERROGATORY NO. 8:**

Please state your Social Security Number.

**RESPONSE:** This responding defendant objects to the question as calling for information that is privileged and protected by the defendant's right of privacy. Responding defendant further objects that the question is harassing, overbroad and calling for the discovery of information that is neither relevant to any issue in this matter nor calculated to lead to the discovery of admissible evidence.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** Please cite authority to support your objections for privacy protections. The objections are improper and without legal basis. Courts generally do not sustain this kind ("ambiguous, confusing or overbroad") of objection unless the question is totally unintelligible. The answering party owes a duty to respond in good faith as best he or she can. See *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has disclosed all information available to him" Further, the social security number of the defendant is necessary to check prior criminal and civil violations similar to those alleged in this complaint.

**SPECIAL INTERROGATORY NO. 9:**

Please identify the name address and telephone number of each and every minor, for whom YOU performed a blessing on the minors home, 3 months prior to the incident.

**RESPONSE:** This responding defendant objects to the question on the grounds that it seeks to obtain information in violation of the rights of privacy and/or religious freedom of individuals, not party to this lawsuit. Responding defendant further objects that the question is harassing, overbroad and calling for the discovery of information that is neither relevant to any issue in this matter nor calculated to lead to the discovery of admissible evidence.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** Please cite authority to support your objections for privacy protections. The objections are improper. Courts generally do not sustain this kind ("ambiguous, confusing or overbroad") of objection unless the question is totally unintelligible. The answering party owes a duty to respond in good faith as best he or she can. See *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has disclosed all information available to him" Plaintiff's believe that the defendant uses his status as a priest to gain access to minors homes by offering blessings to the home owners. This information could lead to admissible evidence at trial, and we ask that you reconsider your objections and provide a supplemental response to this interrogatory.

**SPECIAL INTERROGATORY NO. 16:**

Please identify each and every minor (other than the plaintiffs to this action) their name, address and telephone number who YOU visited at their home/residence in the year 2001.

**RESPONSE:** This responding defendant objects to the question on the grounds that it seeks information that is privileged and protected by the privacy rights of the defendant and the privacy and/or religious freedom rights of persons not party to this lawsuit. Defendant further objects that the question is overbroad, harassing and oppressive and seeks the discovery of information that is neither relevant to any issue in this matter nor calculated to lead to the discovery of admissible evidence. Please supplement this response.

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** As stated previously, the information requested is relevant to the discovery of other potential victims of sexual abuse. The objections with regard to privacy are unsupported by any authority. The "overbroad, harassing and oppressive" objections are inappropriate. Please supplement this response.

**SPECIAL INTERROGATORY NO. 17:**

Please identify each and every minor (other than the plaintiffs to this action) their name, address and telephone number who YOU had telephone contact with in the year 2001.

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

**REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** As stated previously, the information requested is relevant to the discovery of other potential victims of sexual abuse. The objections with regard to privacy are unsupported by any authority. The "overbroad, harassing and oppressive" objections are inappropriate. Please supplement this response.

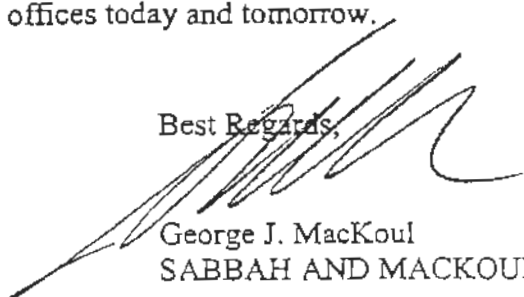
This letter will also confirm our agreement by telephone today, that you have stipulated to an open ended extension to allow us to file an motion to compel on the interrogatories that are subject to this letter and to your clients first set of responses to our request for production of documents, which will be the subject of our next meet and confer letter. We will then set a deadline for a motion to compel to be filed and served if



one is still necessary after we have met and conferred on the content of this letter and the one to follow.

I can be reached at our Falmouth offices today and tomorrow.

Best Regards,



George J. MacKoul  
SABBAH AND MACKOUL

Cc: Tony Boskovich Esq.

**EXHIBIT D**

**COUGHLAN & O'ROURKE LLP**

ATTORNEYS AT LAW

MICHAEL D. COUGHLAN  
ROBERT E. O'ROURKE, JR.

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STOCKTON, CALIFORNIA 95219

TELEPHONE (209) 952-3878  
FACSIMILE (209) 957-5338

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

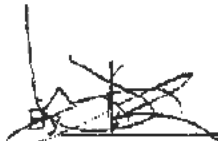
  
\_\_\_\_\_  
Michael D. Coughlan

EXHIBIT           D

# EXHIBIT E

COUGHLAN & O'ROURKE LLI

ATTORNEYS AT LAW

MICHAEL D. COUGHLAN  
ROBERT E. O'ROURKE, JR.

3031 W. MARCH LANE, SUITE 210 WEST  
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May 29, 2003

George MacKoul, Esq.  
Sabbah & MacKoul  
49 Locust Street  
Falmouth, Massachusetts 02540

RE: *Machado v Illo, et al*

Dear Mr. McKoul:

I am writing in response to your letter of March 20, 2003 in an attempt to meet and confer with regard my client's responses to your discovery deemed by you to be "inadequate and deficient". I am hopeful that we will be able to resolve our differences without the necessity of intervention by the court.

I turn first to the general objections, which are interestingly very similar to those set forth in the responses of your clients, and which are given so as avoid the necessity of repeating the same objections to each and every question. Although I believe that it would constitute both a waste of time and paper, I am certainly willing to restate each and every objection as to every question so as to avoid the argument that they have been waived. My client has attempted in good faith to respond to each and every one of your numerous discovery requests based upon information available to him at this early stage of the litigation. In setting forth this general objection, I have simply stated the obvious that as the case develops and additional information becomes available, my client's responses may change.

With regard to General Objection No. 3, I must disagree with your characterization as the objection as "puzzling". In point of fact although a review of the complaint reveals allegations made against my client ranging from acts of sexual molestation and/or battery committed on July 25, 2001 along with claims of libel and slander taking place on September 11, 2001, the definitions section of your discovery requests describes "Incident as the accident, which is the subject matter of the plaintiff's complaint". Despite this ambiguity that requires the responding party to guess at the meaning of almost every question, my client has nevertheless attempted to respond to each question to the best of his ability, when in fact the lack of clarity would have justified an objection without response to each interrogatory.

As for objections to your Form Interrogatories your letter seems to take the position that since the Judicial Counsel approved them, they are somehow beyond objection. In that regard I would refer you to instruction 1(b) to the Form Interrogatories themselves, which specifically states that they neither change existing law relating to interrogatories nor affect a party's right to assert a privilege or objection.

EXHIBIT

E

### **Form Interrogatory 2.1**

My client has gone by no other names, and has given a complete response to the question.

### **Form Interrogatory 2.11**

As indicated previously, the complaint involves multiple allegations and describes more than one incident. The question fails to specify which incident, and is vague and ambiguous. Despite this, defendant attempted to respond to the question in good faith by describing the purpose of his most recent visit to the plaintiffs' home. Although that it may call for a legal opinion and conclusion generally does not serve as grounds for objection to an interrogatory, the objection is valid when the answer is intended to have probative value rather than to lead a party to probative evidence. See *West Pico Furn. Co. v. Sup.Ct.* (1961) 56 Cal2d. 407, 15 Cal Rptr 119. Based upon the allegations in the complaint there seems to be no doubt that the response to this interrogatory would be used for its probative as opposed to discovery value, and as such, the objection is with merit and in good faith.

### **Form Interrogatories 12.2 and 12.6**

For reasons stated above the question is vague and ambiguous in that it fails to define the term "incident". Defendant has nevertheless attempted to decipher its meaning and provide a good faith response. Like the plaintiff, defendant is aware that the Diocese of Stockton apparently conducted a Canon Law Investigation, however, this defendant was no more a part of the investigation than the plaintiffs and has no greater access to information relating to it than do they. Defendant has fully disclosed any information in his possession or control relating to that investigation and any conducted by a police agency.

### **Form Interrogatory 12.3**

This question again fails to adequately define the term "incident" and is vague and ambiguous. As for the subparts to the question seeking information about the specifics of the statements, this defendant does not have this information. To the extent that the statements may have been obtained at the request of counsel for the Diocese in contemplation of litigation prior to the retention of separate counsel on behalf of this defendant, it is my position that under the Joint Defense Doctrine, any privilege that originally attached to the statements was not waived by the development of a conflict that required separate counsel being retained. Regardless, this defendant has provided all of the information that he possesses concerning these statements.

### **Form Interrogatory 13.1**

Defendant has made a good faith attempt to respond to this interrogatory and in doing so is well aware of the duty to disclose information known to himself and or to counsel acting on his behalf. No such surveillance has been undertaken by or on behalf of this defendant, and although defendant believes that the response is clear, will nevertheless agree by stipulation to amend it to a simple "no".

## **Form Interrogatory 15.1 and 17.1**

Defendant stands by the objections and takes exception to the characterization that the stated affirmative defenses are illogical. California Law is clear that interrogatories requesting a party to state all contentions in support of affirmative defenses are improper. The complaint alleges multiple causes of action on behalf of three separate plaintiffs, one an adult, involving not only sexual molestation but also conspiracy, libel, slander and infliction of emotional distress. At this point in time, and most certainly at the time that the answer was filed, defendant lacked information concerning the specifics of the case, and was mindful that party who fails to plead affirmative defenses waives them. See *California Academy of Sciences v County of Fresno* (1987) 192 CalApp3d 1436, 238 CalRptr 154.

At this early stage of discovery defendant is simply not aware of all of the facts surrounding the multiple allegations in this case, and has asserted affirmative defenses on the principle that a party's denials and affirmative allegations of fact do not indicate perjury or fraud but simply attempt to raise all issues on which he may have some chance of success. See *Lynch and Freytag v Cooper* (1990) 218 CalApp3d, 603, 267 CalRptr 189.

### **Special Interrogatories**

#### **No 1.**

The complaint sets forth allegations concerning sexual battery/molestation by my client upon the minor plaintiffs after having been invited to their home and that he subsequently defamed their mother, apparently in response to her reporting of the charges to others. There is no claim that plaintiffs were stalked or preyed upon over the telephone, which if true would most certainly have become part of the police investigation. The mere fact that plaintiffs have made allegations does not dissolve defendant's right to privacy including his telephone number, disclosure of which will have no probative value as to any issue in the case. In addition, it is clear that disclosure of defendant's telephone number is sought so as to allow plaintiff's to seek the identities of other minors, none of which have come forward on their own, who likewise have a right to privacy from being contacted, interrogated and traumatized concerning a private association with their priest.

#### **No 3.**

Plaintiff's question makes a quantum leap by attempting to relate an individual's private perusal of pornography to pedophilia, an argument that would fill our prisons with subscribers to the Internet and publications such a Playboy Magazine. Discovery of visits to pornographic websites by a priest, while scintillating and highly prejudicial, would add nothing by way of probative value to the issues in this case, is clearly overbroad and a patent violation of the defendant's privacy rights.



No. 4, 9, 16, 17

These questions again raises the obvious issues of privacy rights of both the defendant and the third party minors, who it is assumed once identified will be subsequently contacted and interrogated by representatives of the plaintiff's in an attempt to discover non reported child abuse perpetrated by my client. While a question seeking the identities of other victims or even accusers might be discoverable, ones such as these requesting the identities of minors who may have answered the telephone or been present during a home visit without any incident or complaint are clearly overbroad and an abuse of the discovery process. The over breadth of the question becomes even more clear when the defendant has already been the subject of a police investigation prompted by the plaintiffs that revealed no evidence to substantiate the charges serving as the basis of this lawsuit.

No. 5

Referring again to the definitions of incident set forth in the plaintiff's interrogatories, the question most certainly is vague and ambiguous in that the responding party is required to guess at which of the incidents described in the complaint it refers. In addition, the interrogatory as phrased seems to ask alternative questions and is compound and complex at least to this reader.

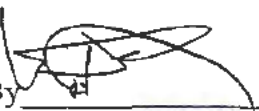
No. 8

Plaintiff claims the need for the defendant's social security number as a means of checking his alleged criminal record for similar criminal and civil violations. Defendant is not aware of any system that catalogues such records by social security number, nor of any discovery tool that would allow the plaintiff to access such a system were one to exist. An individual's social security number is highly private and once disclosed has been identified as a large component in the crime of identity theft. Plaintiff's request for this information is not calculated to lead to discoverable information, is overbroad and in violation of the defendant's privacy rights.

Again I am hopeful that we will be able to work out our differences with regard to this discovery, without involving the court, however, in the alternative we do need to discuss a deadline for the bringing of a motion to compel. In that regard I note that you are operating on a July 7, 2003 deadline with Mr. Balestracci, and would suggest that date so as to avoid multiple trips to California on your part.

I look forward to hearing from you in the near future.

Very truly yours,  
Coughlan & O'Rourke LLP

By   
Michael D. Coughlan



# EXHIBIT F

# SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

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

Park Place East  
348 Park Street, Suite 106  
North Reading, Massachusetts 01864  
978-664-8944  
Fax: 978-664-0820

# COPY

PLEASE REPLY TO OUR FALMOUTH OFFICE

June 16, 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

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

Dear Mr. Coughlan:

This letter is in response to your letter of May 29, 2003. Please let me begin by thanking you for finally responding to my March 20, 2003 letter and for being so amicable with regard to extensions of time to file a motion while we attempt to resolve this discovery dispute. I eagerly await your response to my second meet and confer letter (dated May 23, 2003) regarding your client's document production.

I think it would be productive to respond to each of your arguments stated in your letter, point by point and hopefully you will better understand my client's position and provide supplemental responses to your discovery.

The second paragraph of your letter states:

*I turn first to the general objections, which are interestingly very similar to those set forth in the responses of your clients, and which are given so as avoid the necessity of repeating the same objections to each and every question. Although I believe that it would constitute both a waste of time and paper, I am certainly willing to restate each and every objection as to every question so as to avoid the argument that they have been*

EXHIBIT \_\_\_\_\_ (C)

*waived. My client has attempted in good faith to respond to each and every one of your numerous discovery requests based upon information available to him at this early stage of the litigation. In setting forth this general objection, I have simply stated the obvious that as the case develops and additional information becomes available, my client's responses may change.*

### MY RESPONSE:

I don't see how my client's responses to the other defendants' discovery have any relevance to our discovery dispute. I did not give blanket objections at the beginning of my responses. Repeating the same in each individual response, for argument sake, is also not advisable unless you believe or have a good faith basis in the validity of your objections. I don't think you suppose to "object" unless you have a basis to do so. In other words, how can you possibly waive an objection that is not valid in the first place? To do so to the would be classic "boilerplate objecting" and would expose your client to sanctions.

The law is clear in this regard with respect to answering interrogatories. *Objections must be specific. A motion to compel lies where objections are "too general." Ca Civ Pro § 2030(l); See Korea Data Systems Co. Ltd. v. Sup.Ct. (Emphasis added) (Aamazing Technologies Corp.) (1997) 51 Cal.App.4th 1513, 1516, 59 Cal.Rptr.2d 925, 926--objecting party subject to sanctions for "boilerplate" objections. Monetary sanctions may be imposed for serving responses containing "boilerplate" objections (objections lacking the specificity required by Ca Civ Pro § 2030(f); without the necessity of a prior court order compelling responses. [See Korea Data Systems Co. Ltd. v. Sup.Ct. (Aamazing Technologies Corp.) (1997) 51 Cal.App.4th 1513.*

I will leave you to decide how to amend your responses with respect to your general objection no. 1, 2 and 3.

As far as your argument that the case is "developing", I do not see how this is an issue. You must state all that you and your client know and must investigate answers to the questions asked at the time you file the responses. The law is also clear in this regard. The responding party must make a reasonable effort to obtain whatever information is sought; and if unable to do so, must specify why the information is unavailable and what efforts he or she made to obtain it. See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771, 782, 149 Cal.Rptr. 499, 509. It is not enough that the information *may* come to you in the future, you have a duty to investigate the same and report it in your responses.

Based on your responses to our document request it is clear that you and the other co defendants are sharing vast amounts of information, including witness statements, and other documents, which contain information vital to plaintiff's case. Suffice to say your client is still working as a priest in the Diocese and is still directly under the authority of Bishop Blaire, and still has access to Fr. Illo and others. To somehow plead ignorance with regard to the details of this matter, which has been under investigation for *over a year* by your co-defendants, is not a fair representation of the facts.

In the next paragraph you state:

*With regard to General Objection No. 3, I must disagree with your characterization as the objection as "puzzling". In point of fact although a review of the complaint reveals allegations made against my client ranging from acts of sexual molestation and/or battery committed on July 25, 2001 along with claims of libel and slander taking place on September 11, 2001, the definitions section of your discovery requests describes "Incident as the accident, which is the subject matter of the plaintiffs complaint". Despite this ambiguity that requires the responding party to guess at the meaning of almost every question, my client has nevertheless attempted to respond to each question to the best of his ability, when in fact the lack of clarity would have justified an objection without response to each interrogatory.*

**MY RESPONSE:**

Again, I respectfully disagree with your position. The complaint filed against your client was very detailed and specific. You did not file a Demurrer or Motion to Strike, so I assume you understood the allegations against your client. As the meet and confer process is an opportunity to provide counsel time to communicate and clear up any ambiguity about what information the propounding party is seeking, let me clarify the same. As with each and every interrogatory, we are seeking answers from your client with respect to each and every allegation stated in the complaint against him. As you quite clearly point out, the allegations against your client are for the July 25, 2001 acts of sexual molestation and the September 11<sup>th</sup> acts of defamation. The complaint specifies his illegal behavior quite clearly and the facts are not complicated. We would therefore like your client to respond to each form interrogatory and address both issues. There is no need to guess at anything. If you re read the complaint it will give you a guidepost to what we are asking. If you need more information I would be happy to provide it to you. I hope this clears up any confusion your client may have.

**Form Interrogatory 2.11**

With regard to this interrogatory you state:

*As indicated previously, the complaint involves multiple allegations and describes more than one incident. The question fails to specify which incident, and is vague and ambiguous. Despite this, defendant attempted to respond to the question in good faith by describing the purpose of his most recent visit to the plaintiffs' home. Although that it may call for a legal opinion and conclusion generally does not serve as grounds for objection to an interrogatory, the objection is valid when the answer is intended to have probative value rather than to lead a party to probative evidence. See West Pico Furn. Co. v. Sup.Ct. (1961) 56 Cal2d. 407, 15 Cal Rptr 119. Based upon the allegations in the complaint there seems to be no doubt that the response to this interrogatory would be used for its probative as opposed o discovery value, and as such, the objection is with merit and in good faith.*

**MY RESPONSE:**

I believe my prior response addresses your concerns regarding the allegations stated in our complaint. We would like to know if your client was an employee at the time of the incidents in July and September as so alleged in the complaint. The question is quite straightforward. I have read *West Pico Furniture* and the case states the following, which you quote out of context and admit that your objections "calls for a legal opinion and conclusion" are improper. As clearly stated in *West Pico* : "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". Citing *Greyhound Corp v. Superior Court* at p. 355). I believe that the law requires you to answer the question, and I would appreciate a supplemental response.

**Form Interrogatories 12.2 and 12.6**

Your letter states in response to our letter:

*For reasons stated above the question is vague and ambiguous in that it fails to define the term "incident". Defendant has nevertheless attempted to decipher its meaning and provide a good faith response. Like the plaintiff, defendant is aware that the Diocese of Stockton apparently conducted a Canon Law Investigation, however, this defendant was no more a part of the investigation than the plaintiffs and has no greater access to information relating to it than do they. Defendant has fully disclosed any information in his possession or control relating to that investigation and any conducted by a police agency.*

**MY RESPONSE:**

Again, the complaint and the allegations against your client are clear. In fact you seem to so state them quite clearly and concisely in your discussion regarding Special Interrogatory No. 1 wherein you state in your letter: "*The complaint sets forth allegations concerning sexual battery/molestation by my client upon the minor plaintiffs after having been invited to their home and that he subsequently defamed their mother, apparently in response to her reporting of the charges to others*". Therefore I would appreciate supplemental responses which do not contain the vague and ambiguous objection. The code also mandates that you answer each subpart completely and separately, rather than give one answer to all the subparts. This will avoid any confusions between which witnesses were at the scene or heard statements or had any knowledge. Further although you were not part of the investigation, you have statements in your possession related thereto, so you must have additional information which you are not sharing with plaintiff. How is it that your client was the subject of a Canonical investigation, but was never interviewed by the church or the other defendants?

With respect to 12. 2, again the subparts need to be answered separately and completely. How is it that you have statements from witnesses (Response No. 12.3) yet you claim ignorance to what they contain. If the statement exonerate your client, why would you not want to turn them over to the plaintiff's so that they can re assess their position?

As I understand it do you have a joint defense agreement with the other defendants? If so I would like to see a copy of the agreement. Would you agree to provide it to us informally?

**Response No. 13.1:**

I appreciate your clear "stipulation" in your letter. Would you mind putting the definitive "no" in a supplemental verified response. I don't think I can cross exam your client with a letter from you at the time of trial. A verified interrogatory is much better.

**Form Interrogatory 15.1 and 17.1**

Your letter states:

*Defendant stands by the objections and takes exception to the characterization that the stated affirmative defenses are illogical. California Law is clear that interrogatories requesting a party to state all contentions in support of affirmative defenses are improper. The complaint alleges multiple causes of action on behalf of three separate plaintiffs, one an adult, involving not only sexual molestation but also conspiracy, libel, slander and infliction of emotional distress. At this point in time, and most certainly at the time that the answer was filed, defendant lacked information concerning the specifics of the case, and was mindful that party who fails to plead affirmative defenses waives them. See California Academy of Sciences v County of Fresno (1987) 192 CalApp3d 1436, 238 CalRptr 154.*

*At this early stage of discovery defendant is simply not aware of all of the facts surrounding the multiple allegations in this case, and has asserted affirmative defenses on the principle that a party's denials and affirmative allegations of fact do not indicate perjury or fraud but simply attempt to raise all issues on which he may have some chance of success. See Lynch and Freytag v Cooper (1990) 218 CalApp3d, 603, 267 CalRptr 189.*

**MY RESPONSE**

It is unfortunate that you want to stand by your objections. Perhaps if I explain our position more clearly you may consider changing your mind. I really don't think we want to waist the courts time with regard to this issue. My March 20 letter clearly spelled out the legal obligations an attorney has when filing an answer. I do not argue that you do not have the right to plead all affirmative defenses you believe are applicable to your case. You must do this or the defenses are waived. But this does not allow you to plead

defenses, which you have, a good faith belief at the time you file your answer cannot be proven. Case in point, as I understand it you deny any sexual misconduct existed between your client and mine. How then can you plead contributory negligence if no illegal act ever took place? Does that not seem logically inconsistent to you? The same applies to your "assumption of the risk defense" and your defense re: acts of third parties? The same hold true for the act of defamation. How can you lack specifics of the case. You claim your client was present in my clients home in July and at the meeting with Fr. Illo on September 11. You have read witness statement given to you by the church. The complaint in this matter was filed in September of last year, and you have reviewed police files and presumably other files in this matter. How can you state that your investigation is just beginning. You have a duty to investigate and report to the plaintiff's what the results of your investigation are.

Further, I do not want to have to file a summary judgment motion on your answer, in order to flush out this issue. This is too time consuming and expensive and would force my clients to have to file a motion for sanctions to recoup the expense of the same. It would be much easier for both of us to clear up this issue before hand.

With regard to the legal authority you site in your letter. I read the *California Academy* case, perhaps you mentioned the wrong case authority. That case concerns Estate Taxes and I do not find any language in the case which supports the proposition you are asserting?

Further, your interpretation of the *Lynch/Frytag v. Cooper* case is not analogous to this case. In *Lynch*, the court was discussing an unlawful detainer case and the issue in that case was "Does a defendant commit through allegations in their answer to the complaint the tort of Bad Faith Denial of the Existence of a Contract by pleading inconsistent defenses"? The case has nothing to do with your client's obligation to comply with a discovery request to provide evidence to SUPPORT the affirmative defenses plead in your answer.

Again, I suggest that you take a closer look at the *Lynch* case. If you disagree with this assessment please let me know. I would be happy to review any other authority you may have to support your position. Otherwise I would like an answer to the 15.1 interrogatory and all of its subparts as well as an amended response to our 17.1 interrogatory.

#### Special interrogatory No. 1.

In your letter you state:

*The complaint sets forth allegations concerning sexual battery/molestation by my client upon the minor plaintiffs after having been invited to their home and that he subsequently defamed their mother, apparently in response to her reporting of the charges to others. There is no claim that plaintiffs were stalked or preyed upon over the telephone, which if true would most certainly have become part of the police investigation. The mere fact*



*that plaintiffs have made allegations does not dissolve defendant's right to privacy including his telephone number, disclosure of which will have no probative value as to any issue in the case. In addition, it is clear that disclosure of defendant's telephone number is sought so as to allow plaintiffs to seek the identities of other minors, none of which have come forward on their own, who likewise have a right to privacy from being contacted, interrogated and traumatized concerning a private association with their priest.*

**My Response:**

Are you asserting the right to privacy on behalf of your client or the privacy of the minors you do not represent? As you well know, and as recent history has shown, victims of sexual molestation often do not come forward. We have evidence that your client would often contact minors at their homes. We believe we have the right to the phone records so that we can contact the other minor to see if they have also been molested. We believe we have a right to this information and we would like to know what legal authority you have to support your position.

**Special Interrogatories No. 4, 9, 16, 17**

You state in Your Letter:

*These questions again raises the obvious issues of privacy rights of both the defendant and the third party minors, who it is assumed once identified will be subsequently contacted and interrogated by representatives of the plaintiffs in an attempt to discover non reported child abuse perpetrated by my client. While a question seeking the identities of other victims or even accusers might be discoverable, ones such as these requesting the identities of minors who may have answered the telephone or been present during a home visit without any incident or complaint are clearly overbroad and an abuse of the discovery process. The over breadth of the question becomes even more clear when the defendant has already been the subject of a police investigation prompted by the plaintiffs that revealed no evidence to substantiate the charges serving as the basis of this lawsuit.*

**My Response:**

How are these questions an invasion of your client's privacy rights? How can you assert the right to privacy for these third parties? My understanding is that California courts have limited the assertion of third party privacy rights only under certain circumstances. Does these questions qualify for any of those? What case law do you rely on to support your arguments? The identity of his treating physician is not privileged?

**Special Interrogatory No.5**

Your letter states:

*Referring again to the definitions of incident set forth in the plaintiffs interrogatories, the question most certainly is vague and ambiguous in that the responding party is required to guess at which of the incidents described in the complaint it refers. In addition, the interrogatory as phrased seems to ask alternative questions and is compound and complex at least to this reader.*

**My Response:**

Special Interrogatory No. 5 simply asks your client to identify all employees of the Dioceses of Stockton who were involved in the incidents set forth in the complaint. So as to clarify the question for you, we are particularly interested in those individuals who were involved, or present as witnesses during the July and September 11 incidents discussed above. Would you please respond to this interrogatory now that I have clarified the same?

**Special Interrogatory No.8:**

Plaintiff claims the need for the defendant's social security number as a means of checking his alleged criminal record for similar criminal and civil violations. Defendant is not aware of any system that catalogues such records by social security number, nor of any discovery tool that would allow the plaintiff to access such a system were one to exist. An individual's social security number is highly private and once disclosed has been identified as a large component in the crime of identity theft. Plaintiff's request for this information is not calculated to lead to discoverable information, is overbroad and in violation of the defendant's privacy rights.

**MY RESPONSE:**

While I appreciate your arguments, could you direct me to legal authority to support the same. Plaintiff's would be willing to sign a confidentiality agreement with regard to use of the social security number as it applies to only this litigation. How can you argue that the use of this number does not lead to the discovery of admissible evidence when you argue that it will be used to do a background check of your client. Is not his background, i.e., prior criminal acts of sexual abuse not relevant to prove his propensity to sexually abuse minors in this case? How is it not relevant? Will these limitations satisfy your concerns?

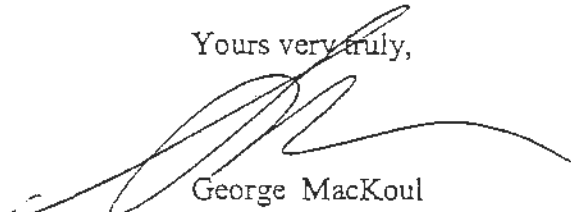
The discovery sent to your client has now been clarified and the authority to obtain the same justified. I believe my client is entitled to all or most of the responses in question. We are willing to work with you in order to avoid having to get the court involved to resolve this dispute. We do not want to go to court and ask for intervention,

as this will not be necessary since most of the legal issues stated in this letter are clearly in favor of the plaintiffs' position.

If you are suggesting that a July 7 deadline be met to file a motion should we fail to resolve this dispute, then you must respond to this letter by advising me if (1) you agree with our position and you will file supplemental responses before July 7, and/or if you disagree with our position and force us to file a motion. Bearing this in mind I would like a response to this letter on or before **June 23, 2003**, or one week from the faxing of this letter. I would also like some written response to my May 23 letter on or before June 23, with regard to your position with respect to your clients response to our document request. The reason I need to put you on such short notice is that I may have to file multiple motions and would like some lead-time. In the event you do not respond to this letter in one week, I will assume you are not going to alter your position and I will seek court intervention. If you need more time to respond to this letter and the May 23 2003 letter then let me know, I will grant you an extension if you will grant me an extension to file my motion beyond July 7. As I understand it we don't have a solid agreement that July 7 is the deadline for filing my motion as you "suggested" it to me to accommodate my travel schedule.

Anticipating that we can continue to work out our differences, I look forward to hearing from you.

Yours very truly,



George MacKoul  
SABBAH AND MACKOUL

GJM/  
DICTATED BUT NOT READ TO AVOID DELAY

FILED

OCT - 3 PM 12:43

BY Carmen Carrasco DEPUTY

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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

PLAINTIFFS CALIFORNIA RULES OF  
COURT 335 STATEMENT OF  
QUESTIONS AND ANSWERS IN  
DISPUTE TO FORM  
INTERROGATORIES SET NO. I.

HEARING DATE: October 30, 2003  
Department: 42

[Filed concurrently with Plaintiffs' Motion  
to Compel Further Answers to Form  
Interrogatories]

26 RE: FORM INTERROGATORIES BY: Plaintiff Rachel Lomas TO: Defendant Fr. Francis  
27 Arakal SET NUMBER 1. The following are certain of the questions verbatim, the responses  
28 received verbatim, and the reasons why (further) answers to said questions should be compelled:  
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**General Objection No 1:** "THIS RESPONDING PARTY OBJECTS TO THESE INTERROGATORIES ON THE GROUNDS THAT THIS RESPONDING PARTY HAS NOT YET FULLY COMPLETED THE INVESTIGATION, DISCOVERY AND TRIAL PREPARATION IN THIS MATTER".

**Response to General Objection No. 1:** As stated above, the law imposes a duty on counsel and your defendant to conduct an investigation and fully discover all know facts in response to the questions asked. While we understand that discovery is an ongoing process, it does not relieve counsel or defendant from their duty to disclose all information known to date and your duty to fully investigate the allegations stated in the complaint. The police investigated the defendant 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 2002. Certainly enough time has been available to complete a reasonable if not thorough investigation of the facts so alleged in the complaint. Plaintiff object to this objection as being inappropriate as it must be stated in each and every response, and does not relieve you of or your client of your obligation under the code to answer each and every interrogatory to the fullest extent possible at the time they are responded to. Finally these questions are *Judicially Approved Form Interrogatories* and I know of no case law, which allows or upholds objections to the form of the question as asked.<sup>1</sup> In fact case law is to the contrary: Objections to the entire set of interrogatories *will not be sustained* if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811.

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<sup>1</sup> I caveat this by noting that the only case to date addressing a valid objection to a form interrogatory is the case of *Nacht v. Superior Court* ( cite omitted) which addressed the invasion of the attorney work product doctrine as to Form Interrogatory 12.1.



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**General Objection No. 2:** "THE RESPONDING PARTY OBJECTS TO THESE INTERROGATORIES ON THE GROUNDS AND TO THE EXTENT THAT THEY SEEK PRIVILEGED, CONFIDENTIAL AND UNDISCOVERABLE INFORMATION THAT IS PROTECTED BY THE ATTORNEY-CLIENT RELATIONSHIP AND/OR THE ATTORNEY CLEINT WORK PRODUCT DOCTRINE".

Response to General Objection No. 2: It is a fallacy to state that all *Judicially Approved Form Interrogatories* by the way they are phrased and/or interpreted by you invade the attorney client privilege. Case law is clear: Objections to the entire set of interrogatories *will not be sustained* if any of the questions is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811

**General Objection No. 3:** "THIS RESPONDING PARTY OBJECTS TO THESE INTERROGATORIES 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: The complaint filed by the plaintiff is lengthy, detailed and specific. Plaintiff alleges that on various occasions stated in the complaint that defendant committed sexual acts against the minor plaintiffs. Defendants responses to the Form interrogatory 12.0 et. Seq. evidences a keen understanding of the definition of "incidents" alleged against your client in the complaint.

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**Form Interrogatory No. 2.11:** At the time of the INCIDENT were you acting as an agent or employee for any PERSON? If so, state:

- (a) The name, ADDRESS, and telephone number of that PERSON:
- (b) A description of your duties.

Response to Form Interrogatory No. 2.11: Objection on the grounds that the question calls for a legal opinion and conclusion. Without waiving the objection, defendant responds that he is uncertain as to the exact dates of the visits that he made to plaintiffs' residence, which appear to form the basis of the allegations in plaintiffs' complaint. Without admitting that any incidents as described in plaintiffs' complaint ever occurred, defendant responds that his most recent visit to plaintiffs residence was made to perform a blessing on the home.

**REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** The interrogatory is not asking for a legal conclusion or opinion. No established case law supports this objection. In fact case law states that this type of objection is improper. "Responses to interrogatories that use objections which states "calls for opinion or conclusion" are *improper*. West Pico Furn. Co. v. Sup.Ct. (1961) 56 Cal.2d 407, 416-417, 15 Cal.Rptr. 119, 123.

The response by its own admission, states that defendant visited plaintiffs' residence to perform a blessing on the home and other visits (clearly identified in the complaint). Plaintiff is simply asking and is entitled to know, as to each and every visit alleged in the complaint, if in fact defendant was or was not acting as an agent and/or employee of the any of the other named defendants.

In addition, this question is not subject defendants general objection No. 1, (further investigation and discovery is not necessary to be able to answer this interrogatory completely)

1 or general objection No. 2: (defendants employment status at the time he allegedly molested  
2 these children is certainly not a subject of attorney client privilege) or general objection No. 3  
3 confusion about which incident (acts of molestation and reporting of the same) we are talking  
4 about as the complaint only alleges two incidents, one in July 2001 and September 11, 2001.  
5

6 **Form Interrogatory 12.2:** Have YOU OR ANYONE ACTING ON YOUR BEHALF

7 interviewed any individual concerning the incident? If so, for each individual state:

8 (a) the name, ADDRESS, and telephone number of the individual interviewed;

9 (b) the date of the interview;

10 (c) the name, ADDRESS, and telephone number of the person who conducted the  
11 interview;

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13 Response to Form Interrogatory 12.2: "Defendant objects on the grounds that the question is  
14 vague and ambiguous. Defendant further objects that the question seeks information protected by  
15 the attorney client privilege and/or the attorney work product doctrine. Without waiving these  
16 objections, Canon Lawyers of the Diocese of Stockton may have interviewed individuals  
17 concerning the incidents identified in the complaint, however, I am not aware of who may have  
18 been interviewed or when such interviews may have been conducted".  
19

20 **REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** First, case law

21 frowns upon the improper objections stated. An objection, which state the question, is  
22 "ambiguous" is one, which Courts generally do not sustain unless the question is totally  
23 unintelligible. The interrogatories propounded are judicially approved. The answering party owes  
24 a **duty** to respond in good faith as best he or she can. See *Deyo v. Kilbourne* (1978) 84  
25 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration



1 that the party has disclosed all information available to him" (emphasis added). Further  
2 defendant did not answer the subparts to the interrogatory.

3 Plaintiff's investigation has revealed that not only a criminal investigation but a Diocese  
4 investigation was conducted regarding the allegations stated in the complaint. Certainly  
5 defendant was a part of that investigation. The defendant diocese produced reports as defendants  
6 so states, and, since the responding party is an employee of the defendant diocese, (which can  
7 only be assumed by your failure to deny the same in your response to interrogatory 12.2) an  
8 adverse party, he has the ability to inquire into the identity of these reports which are not equally  
9 available to plaintiff. The law is clear. "If the responding party does not have personal  
10 knowledge sufficient to respond fully to an interrogatory, that party shall so state, but shall make  
11 a reasonable effort to obtain information by inquiry to other natural persons or organizations,  
12 except where that information is equally available to the propounding party" C.C.P. Section  
13 2030 (f) (1) (emphasis added). Further there is no cross complaint on file for indemnity,  
14 contribution or comparative fault by the responding defendant against the defendant diocese. As  
15 responding defendant is not *adverse* to the other defendants and was and is *still* is an employee  
16 of the other named defendants, responding defendant can be assumed to have access to the  
17 information requested.

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19 **Form Interrogatory 12.3:** Have YOU OR ANYONE ACTING ON YOUR BEHALF obtained  
20 a written record statements from any individual concerning INCIDENT? If so, for each  
21 statements state:

- 22 (a) the name, address and telephone number of the individual from in the statement was  
23 obtained;
- 24 (b) the name, address and telephone number of the individual obtained a statement;
- 25 (c) the date a statement was obtained;

1 (d) the name, address and telephone number of each person who has the original  
2 statement or a copy.

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4 Response to Form Interrogatory 12.3: "Defendant objects on the grounds that the question is  
5 vague and ambiguous. Defendant further objects that the question seeks information protected by  
6 the attorney client privilege and/or attorney work product doctrine. Without waiving the  
7 objections, my attorney is in possession of copies of statements given by members of the St.  
8 Joseph's Parish staff, Jackie Tucker, Mary Mullins, Owen Kummerle and Rosario Hemandez".

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11 **REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

12 The interrogatory is not vague and ambiguous as the Judicial Counsel of California authorizes  
13 the form of the question. Case law frowns upon the improper objections stated. Objections which  
14 state the question is "ambiguous, confusing or overbroad" have been classified as improper  
15 objections by the courts of this state. Courts generally do not sustain this kind of objection  
16 unless the question is totally unintelligible. [citation listed above]. In addition, there is no  
17 attorney client privilege as to communications between *independent witnesses* or persons  
18 identified as Jackie Tucker, Mary Mullins, Owen Kummerle and Rosario Hemandez. **Counsel**  
19 **for defendant Arakal, the responding party to these interrogatories, does not represent**  
20 **these individuals.** The privilege applies only to confidential communications between lawyer  
21 and client. There is no protection for conversations in the presence of others whose presence was  
22 not essential to further the client's interests. *Ca Evid § 952.*

23  
24 Further the responding party has a duty to provide complete responses to each and every  
25 subpart of this interrogatory, which was not done. Had the information been provided, one could



1 move on to the next step in the analysis which is *who acquired the statement?* If it was taken by  
2 the other co-defendants then the work product doctrine does not apply, as to counsel for  
3 defendant Arakal. Nor can an attorney later "by retroactive adoption convert the independent  
4 work of another, already performed, into his own." *Jasper Construction, Inc. v. Foothill Junior*  
5 *College Dist.* (1979) 91 Cal.App.3d 1, 16, 153 Cal.Rptr. 767, 776 (internal quotes omitted).

6 If the statements identified were taken by counsel for Arakal, then they are still not, per  
7 se protected by this privilege as so stated. If the attorney's notes of a witness interview merely  
8 record what the witness said, they are not work product (they are only "evidentiary.") If the notes  
9 also reflect the attorney's (or his or her investigator's) impressions, conclusions, or opinions  
10 regarding the witness, at least those portions of the notes are absolutely protected from  
11 discovery. *Rodriguez v. McDonnell Douglas Corp.* (1978) 87 Cal.App.3d 626, 647-648, 151  
12 Cal.Rptr. 399, 410] Which is it? And, where the witness' statement and the attorney's  
13 impressions are inextricably intertwined, then absolute protection is afforded to all portions of  
14 the attorney's notes. *Rodriguez v. McDonnell Douglas Corp.*, supra, 87 Cal.App.3d at 647-648,  
15 151 Cal.Rptr. at 410.

16  
17  
18 **Form Interrogatory No. 15.1:** Identify each and every denial of a material allegation and each  
19 special or affirmative defense in your pleadings and for each:

- 20 (a) state all facts upon which you base the denial or special or affirmative defense;  
21 (b) state the names, ADDRESSES and telephone numbers of all PERSONS who have  
22 knowledge of those facts  
23 (c) Identify all DOCUMENTS and other tangible things which support your denial or special or  
24 affirmative defense, and state the name, ADDRESSES, and telephone number of the  
25 PERSON who has each DOCUMENT.

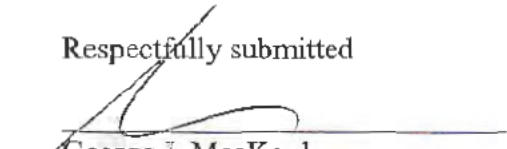
26 Response to Form Interrogatory No. 15.1: "This responding party objects to this interrogatory on  
27 the ground that it requests information protected by the attorney client privilege and or the

1 attorney work product doctrine. As a matter of proper pleading and practice, responding party  
2 has pled certain affirmative defenses and will not waive them here. This responding party further  
3 objects to this interrogatory as it purports to acquire what amounts to a verified response to an  
4 unverified complaint and also calls for this responding party to speculate as to what are  
5 considered material allegations in the pleadings. This responding party further objects to this  
6 interrogatory as it is premature and responding party has not yet conducted discovery”.

7  
8  
9 **REASON WHY FURTHER ANSWERS SHOULD BE COMPELLED:** This interrogatory is  
10 asking the responding party to substantiate each affirmative defense stated in their answer to the  
11 complaint. We are not asking that defendant to waive an affirmative defense but would like to  
12 know what facts and evidence defendant has to support, in some cases, illogical defenses to this  
13 case. Some of the affirmative defenses allege that the molestation of the minor plaintiffs (ages  
14 13 & 11!) was a result of their *own* negligence, negligence of third parties, failure to mitigate the  
15 molestation, or that the claims are barred by the statute of limitations. Yet defendant in his other  
16 responses to request for admissions and interrogatories **deny** any molestation took place. This is  
17 illogical. Just as plaintiffs may be sanctioned for filing frivolous lawsuits, defendants may be  
18 sanctioned for asserting nonmeritorious cross-complaints or denials and defenses in their  
19 answers--e.g., answers containing dozens of affirmative defenses (waiver, estoppel, laches,  
20 unclean hands, etc.) for which there is no evidentiary support, please see or Ca Civ Pro § 128.7  
21 (b) (1-3) requiring a party to not present an unmeritorious defense which will increase the cost of  
22 litigation. The responding party’s response, which states that this interrogatory is premature, is  
23 without legal basis. An attorney in California cannot simply file a baseless complaint or baseless  
24 answer. As so stated in C.C.P. 128.7 (b) by presenting an answer to the court the attorney is  
25 certifying that “to the best of the persons knowledge, information, and belief, formed after an  
inquiry reasonable under the circumstances”...that it is not being presented for an improper

1 purpose to harass or cause unnecessary delays and that the affirmative defenses have facts to  
2 support said defense. The argument that responding party has not had time to complete its  
3 investigation is also baseless. This is a molestation claim against the responding party, it is not a  
4 not a complex piece of litigation. As so state by the responding party the witnesses to the acts  
5 alleged are limited and the investigation, which defendant has had almost 6 months to complete  
6 is also baseless.

7  
8 Dated: 10/21/13

Respectfully submitted  
  
George J. MacKoul  
Attorney for Plaintiffs

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FILED

OCT -9 PM 12:43

CLERK

BY *Carman*

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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  
)  
) **PLAINTIFFS CALIFORNIA RULES OF**  
) **COURT 335 STATEMENT OF**  
) **QUESTIONS AND ANSWERS IN**  
) **DISPUTE TO SPECIAL**  
) **INTERROGATORIES SET NO. 1.**  
)  
) **HEARING DATE: October 30, 2003**  
) **Department:**  
)  
) **[Filed concurrently with Plaintiffs' Motion**  
) **to Compel Further Answers to Special**  
) **Interrogatories]**

26 RE: SPECIAL INTERROGATORIES BY: Plaintiff Rachel Lomas TO: Defendant Fr. Francis  
27 Arakal SET NUMBER 1. The following are certain of the questions verbatim, the responses  
28 received verbatim, and the reasons why (further) answers to said questions should be compelled:  
29  
30

1  
2 **General Objection No 1:** "THIS RESPONDING PARTY OBJECTS TO THESE  
3 INTERROGATORIES ON THE GROUNDS THAT THIS RESPONDING PARTY HAS NOT  
4 YET FULLY COMPLETED THE INVESTIGATION, DISCOVERY AND TRIAL  
5 PREPARATION IN THIS MATTER".  
6

7 **Response to General Objection No. 1:** As stated above, the law imposes a duty on counsel and  
8 your defendant to conduct an investigation and fully discover all know facts in response to the  
9 questions asked. While we understand that discovery is an ongoing process, it does not relieve  
10 counsel or defendant from their duty to disclose all information known to date and your duty to  
11 fully investigate the allegations stated in the complaint. The police investigated the defendant in  
12 May of 2002, almost one year ago regarding the allegations stated in the complaint. The lawsuit  
13 in this matter was filed in September of 2002. Certainly enough time has been available to  
14 complete a reasonable if not thorough investigation of the facts so alleged in the complaint.  
15 Plaintiff object to this objection as being inappropriate as it must be stated in each and every  
16 response, and does not relieve you of or your client of your obligation under the code to answer  
17 each and every interrogatory to the fullest extent possible at the time they are responded to.  
18

19 **General Objection No. 2:** "THE RESPONDING PARTY OBJECTS TO THESE  
20 INTERROGATORIES ON THE GROUNDS AND TO THE EXTENT THAT THEY SEEK  
21 PRIVILEGED, CONFIDENTIAL AND UNDISCOVERABLE INFORMATION THAT IS  
22 PROTECTED BY THE ATTORNEY-CLIENT RELATIONSHIP AND/OR THE ATTORNEY  
23 CLEINT WORK PRODUCT DOCTRINE".  
24  
25

1 Response to General Objection No. 2: It is a fallacy to state that all *the special interrogatories* by  
2 the way they are phrased and/or interpreted by you invade the attorney client privilege. Case law  
3 is clear: Objections to the entire set of interrogatories *will not be sustained* if any of the questions  
4 is proper. *Wooldridge v. Mounts* (1962) 199 Cal.App.2d 620, 628, 18 Cal.Rptr. 806, 811  
5

6 **General Objection No. 3:** "THIS RESPONDING PARTY OBJECTS TO THESE  
7 INTERROGATORIES ON THE GROUNDS AND TO THE EXTENT THAT THE TERM  
8 "INCIDENT" USED THROUGHOUT IS VAGUE AS TO WHICH SPECIFIC EVENT THE  
9 PROPOUNDING PARTY IS REFERRING"  
10

11 Response to General Objection No. 3: The complaint filed by the plaintiff is lengthy, detailed  
12 and specific. Plaintiff alleges that on various occasions stated in the complaint that defendant  
13 committed sexual acts against the minor plaintiffs. Defendants responses to the Form  
14 interrogatory 12.0 et. Seq. evidences a keen understanding of the definition of "incidents"  
15 alleged against your client in the complaint.  
16  
17

18 **SPECIAL INTERROGATORY NO. 1:**

19 YOUR personal and professional telephone numbers used by YOU during the calendar year  
20 2001  
21

22 **RESPONSE TO SPECIAL INTERROGATORY NO.1:** "This responding defendant objects  
23 to the question as calling for information that is privileged and protected by the defendant's right  
24 of privacy. Responding defendant further objects that the question is harassing, overbroad and  
25



1 calling for the discovery of information that is neither relevant to any issue in this matter nor  
2 reasonably calculated to lead to the discovery of admissible evidence”.

3  
4 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

5 The identity of a telephone number used to contact and plaintiffs is not privileged information,  
6 and no authority to support an objection is given. As to the privacy objection, the identity of a  
7 telephone numbers does not fall in the general zone of privacy protection such as personal  
8 finances and or in some instances medical records. Even then privacy protection is qualified, not  
9 absolute. A "balancing" is required: i.e., the need for discovery in each case must be weighed  
10 against the interests sought to be protected by the privacy right recognized. The responding party  
11 provides no authority to support their objections. The harassing and overbroad objection is also  
12 designed to obstruct production of the information sought. How is asking for the identity of a  
13 telephone number used to prey on minor children not relevant to this case? How is this  
14 harassing?

15  
16  
17 **SPECIAL INTERROGATORY NO. 4:**

18 The names, addresses, and telephone numbers of all minors you spoke to on the telephone during  
19 the months of May through September 2001.

20  
21 **RESPONSE:** “This responding defendant objects to the question as calling for information that  
22 is privileged and protected by the defendant’s right of privacy. Responding defendant further  
23 objects that the question is harassing, overbroad and calling for the discovery of information that  
24 is neither relevant to any issue in this matter nor reasonably calculated to the discovery of  
25 admissible evidence”.

1  
2 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

3 Plaintiffs have evidence that defendant has a custom and practice of calling minors at home  
4 when there parents are not there. In addition the information is relevant to plaintiffs being able to  
5 contact and interview other minors who may have been molested by defendant but have not yet  
6 come forward. There is no right to privacy in disclosure of third party's telephone number, and  
7 as plaintiff understands the objection it is a first party privacy objection. The interrogatory is not  
8 harassing, nor is it overbroad, it only seeks the identity of other minors contacted by defendant.  
9 Please provide a supplemental response to this discovery.  
10

11  
12 **SPECIAL INTERROGATORY NO. 5:**

13 The names, addresses and telephone numbers of each and every employee, agent or  
14 representative of the Diocese of Stockton regarding the INCIDENT to whom you communicated  
15 or to whom YOU communicated any information regarding the INCIDENT.  
16

17 **RESPONSE:** "This responding defendant objects to the question as vague, ambiguous,  
18 compound and complex".  
19

20 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** The objections  
21 are improper. Courts generally do not sustain this kind ("ambiguous, confusing or overbroad") of  
22 objection unless the question is totally unintelligible. The answering party owes a duty to  
23 respond in good faith as best he or she can. See Deyo v. Kilbourne (1978) 84 Cal.App.3d 771,  
24 783, 149 Cal.Rptr. 499, 509--verification of answers is "in effect a declaration that the party has  
25

1 disclosed all information available to him" The question is simply asking for the identity of any  
2 and all witnesses to the incidents stated in the complaint.

3  
4 **SPECIAL INTERROGATORY NO. 8:**

5 Please state your Social Security Number.

6  
7 **RESPONSE:** This responding defendant objects to the question as calling for information that is  
8 privileged and protected by the defendant's right of privacy. Responding defendant further  
9 objects that the question is harassing, overbroad and calling for the discovery of information that  
10 is neither relevant to any issue in this matter nor calculated to lead to the discovery of admissible  
11 evidence.

12  
13 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

14 The objections are improper and without legal basis. Courts generally do not sustain this kind  
15 ("ambiguous, confusing or overbroad") of objection unless the question is totally unintelligible.

16 The answering party owes a duty to respond in good faith as best he or she can. See *Deyo v.*  
17 *Kilbourne* (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499, 509--verification of answers is "in  
18 effect a declaration that the party has disclosed all information available to him" Further, the  
19 social security number of the defendant is necessary to check prior criminal and civil violations  
20 similar to those alleged in this complaint.

21  
22  
23 **SPECIAL INTERROGATORY NO. 9:**

24 Please identify the name address and telephone number of each and every minor, for whom YOU  
25 performed a blessing on the minors home, 3 months prior to the incident.

1  
2 **RESPONSE:** "This responding defendant objects to the question on the grounds that it seeks to  
3 obtain information in violation of the rights of privacy and/or religious freedom of individuals,  
4 not party to this lawsuit. Responding defendant further objects that the question is harassing,  
5 overbroad and calling for the discovery of information that is neither relevant to any issue in this  
6 matter nor calculated to lead to the discovery of admissible evidence".  
7

8 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** Please cite  
9 authority to support your objections for privacy protections. The objections are improper. Courts  
10 generally do not sustain this kind ("ambiguous, confusing or overbroad") of objection unless the  
11 question is totally unintelligible. The answering party owes a duty to respond in good faith as  
12 best he or she can. See *Deyo v. Kilbourne* (1978) 84 Cal.App.3d 771, 783, 149 Cal.Rptr. 499,  
13 509--verification of answers is "in effect a declaration that the party has disclosed all information  
14 available to him" Plaintiff's believe that the defendant uses his status as a priest to gain access to  
15 minors homes by offering blessings to the home owners. This information could lead to  
16 admissible evidence at trial.  
17

18  
19 **SPECIAL INTERROGATORY NO. 16:**

20 Please identify each and every minor (other than the plaintiffs to this action) their name, address  
21 and telephone number who YOU visited at their home/residence in the year 2001.  
22

23 **RESPONSE:** "This responding defendant objects to the question on the grounds that it seeks  
24 information that is privileged and protected by the privacy rights of the defendant and the  
25 privacy and/or religious freedom rights of persons not party to this lawsuit. Defendant further



1 objects that the question is overbroad, harassing and oppressive and seeks the discovery of  
2 information that is neither relevant to any issue in this matter nor calculated to lead to the  
3 discovery of admissible evidence. Please supplement this response".  
4

5 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** As stated  
6 previously, the information requested is relevant to the discovery of other potential victims of  
7 sexual abuse. The objections with regard to privacy are unsupported by any authority. The  
8 "overbroad, harassing and oppressive" objections are inappropriate.  
9

10  
11 **SPECIAL INTERROGATORY NO. 17:**

12 Please identify each and every minor (other than the plaintiffs to this action) their name, address  
13 and telephone number who YOU had telephone contact with in the year 2001.

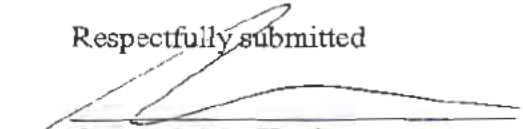
14 **RESPONSE:** "Defendant objects to the question on the grounds that it seeks information that is  
15 privileged and protected by the defendant's right of privacy and the privacy and/or religious  
16 freedom rights of persons not party to this lawsuit. Defendant further objects that the question is  
17 overbroad, harassing and oppressive, and seeks the discovery of information that is neither  
18 relevant to any issue in this matter nor calculated to lead to the discovery of admissible  
19 evidence".  
20

21  
22 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:** As stated  
23 previously, the information requested is relevant to the discovery of other potential victims of  
24 sexual abuse. The objections with regard to privacy are unsupported by any authority. The  
25

1 "overbroad, harassing and oppressive" objections are inappropriate. Please supplement this  
2 response.

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Dated: October 6, 2003

Respectfully submitted  
  
George J. MacKoul  
Attorney for Plaintiffs

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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

PLAINTIFFS CALIFORNIA RULES OF  
COURT 335 STATEMENT OF  
QUESTIONS AND ANSWERS IN  
DISPUTE TO REQUEST FOR  
PRODUCTION SET NO. 1.

HEARING DATE: October 30, 2003  
Department: 42

[Filed concurrently with Plaintiffs' Motion  
to Compel Further Answers to Special  
Interrogatories]

RE: REQUEST FOR PRODUCTION BY: Plaintiff Rachel Lomas TO: Defendant Fr. Francis

Arakal SET NUMBER 1. The following are certain of the questions verbatim, the responses

received verbatim, and the reasons why (further) answers to said questions should be compelled:

1 **General Objection No 1:** "THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS  
2 ON THE GROUNDS THAT THIS RESPONDING PARTY HAS NOT YET FULLY  
3 COMPLETED THE INVESTIGATION, DISCOVERY AND TRIAL PREPARATION IN THIS  
4 MATTER".

5  
6 **Response to General Objection No. 1:** As stated above, the law imposes a duty on counsel and  
7 your defendant to conduct an investigation and fully discover all know facts in response to the  
8 questions asked. While we understand that discovery is an ongoing process, it does not relieve  
9 counsel or defendant from their duty to disclose all information known to date and your duty to  
10 fully investigate the allegations stated in the complaint. The police investigated the defendant in  
11 May of 2002, almost one year ago regarding the allegations stated in the complaint. The lawsuit  
12 in this matter was filed in September of 2002. Certainly enough time has been available to  
13 complete a reasonable if not thorough investigation of the facts so alleged in the complaint.  
14 Plaintiff object to this objection as being inappropriate as it must be stated in each and every  
15 response, and does not relieve you of or your client of your obligation under the code to answer  
16 each and every interrogatory to the fullest extent possible at the time they are responded to.

17  
18 **General Objection No. 2:** "THE RESPONDING PARTY OBJECTS TO THESE REQUESTS  
19 ON THE GROUNDS AND TO THE EXTENT THAT THEY SEEK PRIVILEGED,  
20 CONFIDENTIAL AND UNDISCOVERABLE INFORMATION THAT IS PROTECTED BY  
21 THE ATTORNEY-CLIENT RELATIONSHIP AND/OR THE ATTORNEY CLEINT WORK  
22 PRODUCT DOCTRINE".



1 Response to General Objection No. 2: It is a fallacy to state that all *request for documents* by the  
2 way they are phrased and/or interpreted by you invades the attorney client privilege. This is  
3 classic boilerplate objecting.

4  
5 **General Objection No. 3:** "THIS RESPONDING PARTY OBJECTS TO THESE REQUESTS  
6 ON THE GROUNDS AND TO THE EXTENT THAT THE TERM "INCIDENT" USED  
7 THROUGHOUT IS VAGUE AS TO WHICH SPECIFIC EVENT THE PROPOUNDING  
8 PARTY IS REFERRING"

9  
10 Response to General Objection No. 3: The complaint filed by the plaintiff is lengthy, detailed  
11 and specific. Plaintiff alleges that on various occasions stated in the complaint that defendant  
12 committed sexual acts against the minor plaintiffs. Defendants responses to the Form  
13 interrogatory 12.0 et. Seq. evidences a keen understanding of the definition of "incidents"  
14 alleged against your client in the complaint.

15  
16 **REQUEST NO. 5: A COPY OF YOUR PERSONAL CALENDAR/DATE BOOK FOR**  
17 **THE YEAR 2001**

18  
19 **RESPONSE TO REQUEST FOR PRODUCTION NO. ( 5)**

20 Defendant objects on the grounds that the request seeks the production of privileged documents  
21 protected by the defendant's right of privacy and the rights of privacy and religious freedom of  
22 other person, not a party to this action the extent that the calendar identifies other individuals.  
23 Defendant further objects that the demand is overbroad and seeks the discovery of information  
24 that is neither relevant to any issue in this matter nor reasonably calculated to lead to the  
25 discovery of admissible evidence. Without waiving the objections, defendant will produce any

1 notations in the subject calendar that specifically relate to the plaintiffs in this action, assuming  
2 that any such notations exist. Defendant will redact any references not related to the plaintiffs.

3  
4 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

5 The objections do not comply with the requirements of C.C.P. 2031 (f) (2). Legal authority,  
6 does not support the objections based on privacy and religious freedom. Further the response on  
7 its face, admits that a reasonable search and diligent effort was not made as the term "assuming  
8 any such notations exist", is akin to no response at all. The request is relevant because the item  
9 requested may lead to discovery of other abuse victims.  
10

11  
12 **REQUEST FOR PRODUCTION OF DOCUMENTS NO. 7:**

13 All documents in YOUR possession, custody and control, evidencing communications between  
14 YOU and any of the other named defendants, of and concerning any of the allegations stated in  
15 plaintiffs' complaint.  
16

17 **RESPONSE TO REQUEST FOR PRODUCTION NO. ( 7)**

18 Defendant objects to this request on the grounds that the request seeks the production of  
19 documents protected by the attorney client privilege and/or attorney work product doctrine. The  
20 only such documents responsive to the demand in defendant's possession and/or control is a  
21 memorandum written by defendant, dated October 5, 2001 following the incident of September  
22 11, 2001, to which defendant claims attorney client privilege and or protection under the attorney  
23 work product doctrine.  
24  
25

1 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

2 The responding party does not clarify how the statement was obtained. If it was the personal  
3 notes of the defendant, not drafted in anticipation of litigation, and the memorandum was not  
4 communicated directly to counsel then the privilege would not apply. Further since the request  
5 specifically asks for statements made to other defendants then the memorandum was transmitted  
6 to the other named defendants, placing it outside the rubric of the attorney client privilege.

7 Obviously if it exonerates defendant and/or reveals the names of other witnesses it is clearly  
8 discoverable and should be disclosed.  
9

10  
11 **REQUEST FOR PRODUCTION NO. 15:**

12 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR RESPONSES TO  
13 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.1.  
14

15 **RESPONSE TO REQUEST FOR PRODUCTION NO. ( 15):**

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



1 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

2 Defense counsel does not represent, *St. Joseph's Parish staff members, Jackie Tucker, Mary*  
3 *Mullins, Rosario Hernandez and Owen Kummerle*. The Discovery Act refers only to the "work  
4 product" of attorneys acting on *a client's behalf*. Ca Civ Pro § 2018(a). Therefore defendant and  
5 his counsel have no authority to claim attorney work product privilege with respect to individuals  
6 whom you do not represent. In addition, any attorney client privilege is also baseless. The form  
7 interrogatory referred to in this request are not vague and ambiguous.  
8

9  
10 **REQUEST FOR PRODUCTION NO'S 16 & 17:**

11 The objections stated defendant is similar to the ones stated by defendant in response to request  
12 no. 15, and the objections thereto are also improper.  
13

14 **REQUEST FOR PRODUCTION NO. 26:**

15 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR RESPONSES TO  
16 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 15.1.  
17

18 **RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

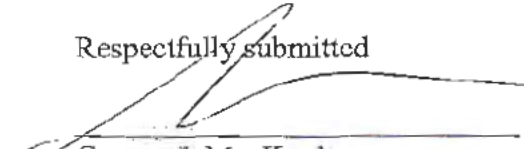
19 Defendant restates and incorporates herein by reference all objections set forth in defendant's  
20 response to form interrogatory 15.1. Defendant has not conducted discovery and presently is not  
21 in possession of any documents responsive to this demand.  
22  
23  
24  
25

1 **REASONS WHY FURTHER RESPONSES SHOULD BE COMPELLED:**

2 The response is not appropriate. As so stated in our March 20, 2003 Meet and Confer letter and  
3 335 statement with regard to Form Interrogatory response, defendant has a have a duty to verify  
4 all evidence to support you affirmative defenses stated in defendants answer.  
5

6  
7 Dated: October 6, 2003

Respectfully submitted



George J. MacKoul  
Attorney for Plaintiffs

**Santa Joaquin County Superior Court**

**Receipt**

Received by: CCC

Date: 10/09/2003

Receipt No: 2003100911007

From: GEORGE J MACKOUL

Case: CV018440 MACHADO VS ILLO/JOSEPH/ARAKAL/RYAN

Remarks: PLTF

Fee Code	Qty	Fee	Paid Before	Waived	Amt Due
1 CIV11 NOTICE OF MOTION OR ANY PAPER REQI	3	\$36.30			\$108.90
Amount Received in Cash:			Total Amount Due:		\$108.90
Check or Money Order: \$109.00					
Charged:			Overage:		\$ .10
Total Payments: \$109.00					

OVERAGES UNDER \$10 WILL NOT BE REFUNDED PER GOV'T CODE 29375.1

# 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

**PLEASE REPLY TO OUR FALMOUTH OFFICE**

October 07, 2003

File no. MachadoC/CA02-0001

Mr. Clerk Of Court  
Clerk Of The Court  
Superior Court  
222 E. Weber Ave #303  
Stockton, California 95202-2777

*Re: Lomas v. Diocese of Stockton, et. al*  
*Case Number: CV018440*

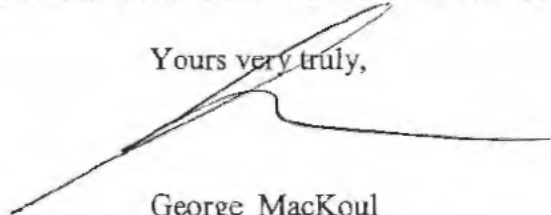
Dear Clerk:

Please file the enclosed (3) motions to compel form interrogatories, special interrogatories and request for production of documents, along with separately filed C.R.C. 335 Statements.

I enclose a filing fee of \$109.00 to cover all three filing fees. I also enclose a self addressed stamped envelope and would appreciate it if you could return the additional cover sheets stamped to show evidence of service.

If you have any question, I can be reached at our Falmouth offices listed above.

Yours very truly,



George MacKoul  
SABBAH AND MACKOUL

GJM/  
Enclosures

PROOF OF SERVICE

COMMONWEALTH OF  
MASSACHUSETTS  
BARNSTABLE COUNTY

I am employed in the County of Barnstable, Commonwealth of Massachusetts. I am  
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: Motion to Compel Form Interrogatory A  
Motion to Compel Special Interrogatory Answers and Motion to Compel Request for Production  
Documents, with accompanying C.C.R. 335 Statements for each motion, \_\_\_\_\_ on the inter-  
in said action by transmitting a true copy of said document by facsimile machine. The doc-  
above to the fax number(s) set forth below on this date from (508) 495-4115, the transmis-  
reported as complete and without error. Said fax transmission occurred as stated in the trans-  
record attached hereto. Said fax transmission was directed to the names and addresses set

\_\_\_\_\_ by placing the documents(s) listed above in a sealed envelope with postage thereon  
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-  
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  
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 Massachu-  
setts that the above is true and correct.

Executed on October 7, 2003 at Falmouth, Massachusetts.

  
George J. MacKoul



EAD FILED  
SUPERIOR COURT STOCKTON

2003 JUL 21 AM 9:18

JANNE HILLSAPS, CLERK  
*[Signature]*  
DEPUTY

1 PAUL N. BALESTRACCI (SBN: 083987)  
2 NEUMILLER & BEARDSLEE  
3 A PROFESSIONAL CORPORATION  
4 Post Office Box 20  
5 Stockton, CA 95201-3020  
6 Telephone: (209) 948-8200  
7 Facsimile: (209) 948-4910  
8 Attorneys for Defendants,  
9 FATHER. JOSEPH ILLO, MONSIGNOR  
10 RICHARD J. RYAN, BISHOP STEPHEN E.  
11 BLAIRE, and THE ROMAN CATHOLIC  
12 BISHOP OF STOCKTON, a Corporation Sole

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 FOR THE COUNTY OF SAN JOAQUIN

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

Case No. CV 018440

**NOTICE OF CONTINUED STATUS/CASE  
MANAGEMENT CONFERENCE**

13 Plaintiffs,

14 vs.

15 FR. JOSEPH ILLO, FR. FANCIS JOSEPH,  
16 a.k.a. FR. FRANCIS ARAKAL, FR.  
17 RICHARD J. RYAN, BISHIP STEVEN  
18 BLAIRD, AND THE DIOCESE OF  
19 STOCKTON

20 Defendants.

21 NOTICE IS HEREBY GIVEN that a further Status/Case Management Conference in this  
22 matter has been scheduled for November 17, 2003 at 8:45 a.m. in Dept. 42 of the above-entitled  
23 court. No new statements are required.

24 Dated: July 17, 2003

NEUMILLER & BEARDSLEE  
A PROFESSIONAL CORPORATION

25 By: *[Signature]*

26 PAUL N. BALESTRACCI  
27 Attorneys for the Defendants,  
28 FATHER. JOSEPH ILLO, MONSIGNOR  
RICHARD J. RYAN, BISHOP STEPHEN E.  
BLAIRE, and THE ROMAN CATHOLIC  
BISHOP OF STOCKTON, a Corporation Sole

1 **PROOF OF SERVICE**

2 **CCP 1013a**

3 I am a resident of the State of California, over the age of eighteen years, and not a party to  
4 the within action. My business address is 509 W. Weber Avenue, Stockton, California 95203. On  
5 July 17, 2003, I served the within documents:

6 **NOTICE OF CONTINUED STATUS/CASE MANAGEMENT CONFERENCE**



8 **(BY MAIL)** I am readily familiar with the firm's practice of collection and processing  
9 correspondence for mailing. Under that practice it would be deposited with the U.S.  
10 Postal Service on that same day with postage thereon fully prepaid in the ordinary  
11 course of business. I am aware that on motion of the party served, service is presumed  
12 invalid if postal cancellation date or postage meter date is more than on day after the  
13 date of deposit for mailing in affidavit.



15 **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the address(es)  
16 shown below.



18 **(BY FACSIMILE MACHINE)** I sent such document from facsimile machine (209)  
19 948-4910 on \_\_\_\_\_, 2003. I certify that said transmission was  
20 completed and that all pages were received and that a report was generated by  
21 facsimile machine (209) 948-4910 which confirms said transmission and receipt. I,  
22 thereafter, mailed a copy to the interested party(ies) in this action by placing a true  
23 copy thereof enclosed in sealed envelop(s) addressed to the parties listed below



25 **(BY FEDERAL EXPRESS)** Having placed the document in an envelope(s) or  
26 package(s) designated by Federal Express with delivery fees paid or provided for,  
27 addressed as stated below, I deposited the envelope(s) or package(s) in a box or other  
28 facility regularly maintained by Federal Express or delivered the envelope(s) or  
package(s) to a courier or driver authorized by Federal Express to receive documents.

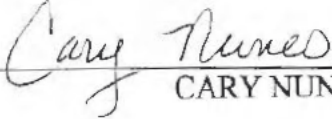
George J. MacKoul, Esq.  
SABBAH and MacKOUL  
49 Locust Street  
Falmouth, MA 02540  
Telephone: (508) 495-4955  
*(Attorneys for Plaintiff)*

Anthony Boskovich  
LAW OFFICES OF ANTHONY BOSKOVICH  
28 N. First Street, 6th Floor  
San Jose, CA 95113-1210  
Telephone: (408) 286-5150  
*(Attorney for Plaintiff)*

Michael D. Coughlan, Esq.  
COUGHLAN & O'ROURKE, LLP  
3031 W. March Lane, Ste. 210 West  
Stockton, CA 95219  
*(Attorneys for Defendant, Fr. Francis Arakal)*

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

3 Executed this 17<sup>th</sup> day of July 2003, at Stockton, California.

4  
5   
6 \_\_\_\_\_  
7 CARY NUNES  
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

02/06/03 08:45 AM 42 met at Stockton, California

Hon. Carter P. Holly

Date Dept Judge

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

Clerk: Netta Atwater Reporter: Bailiff: A. Di Giorgio Interpreter:

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

George Mackowiak Law offices of Anthony Boskovich NEUMILLER & BEARDSLEE Paul Balestracci Coughlan & O'rourke NEUMILLER & BEARDSLEE Michael Coughlan NEUMILLER & BEARDSLEE NEUMILLER & BEARDSLEE

Matter is continued to 5/15/03 @ 8:45 pm 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



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): <b>GEORGE J. MACKOUL (BAR NUMBER 170586)</b> <b>SABBAH AND MACKOUL</b> <b>49 LOCUST STREET</b> <b>FALMOUTH MASSACHUSETTS 02540</b> TELEPHONE NO.: 508-495-4955 FAX NO. (Optional): E-MAIL ADDRESS (Optional): PLAINTIFFSS ATTORNEY FOR (Name):	FOR COURT USE ONLY <div style="text-align: center;">                     * FILED *                      SUPERIOR COURT - STOCKTON                      2003 FEB -4 PM 12:11                      JEANNE SPESAPS, CLERK  <i>Michele West</i>                      BY _____                      DEPUTY                 </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <u>STAN JOAQUIN County</u> STREET ADDRESS: 222 EAST WEBER AVE U MAILING ADDRESS: CITY AND ZIP CODE: STOCKTON CA 95202 BRANCH NAME: STOCKTON CA	
PLAINTIFF/PETITIONER: <b>KATHLEEN MACHADO E.T. A.L.</b> DEFENDANT/RESPONDENT: <b>FR. JOSEPH ILLO E.T.A. A.L.</b>	
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)	CASE NUMBER: <div style="font-size: 24pt; font-weight: bold;">CV 018440</div>

A CASE MANAGEMENT CONFERENCE is scheduled as follows:  
 Date: **FEB 6, 2003** Time: **8:45 A.M.** Dept.: **42** Div.: Room:  
 Address of court (if different from the address above):

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

1. **Party or parties (answer one):**
  - a.  This statement is submitted by party (name): **PLAINTIFF, KATHLEEN MACHADO, AS AN INDIVIDUAL AND**
  - b.  This statement is submitted jointly by parties (names): **AS GUARDIAN AD LITEM FOR PLAINTIFFS RACHEL AND AMBER LOMAS**
  
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
  - a. The complaint was filed on (date): **SEPTEMBER 10, 2003**
  - b.  The cross-complaint, if any, was filed on (date):
  
3. **Service (to be answered by plaintiffs and cross-complainants only)**
  - a.  All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b.  The following parties named in the complaint or cross-complaint
    - (1)  have not been served (specify names and explain why not):
    - (2)  have been served but have not appeared and have not been dismissed (specify names):
    - (3)  have had a default entered against them (specify names):
  - c.  The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served): **OTHER MEMBERS OF DEFENDANT DIOCESE OF STOCKTONS ORGANIZATION WHO MAY HAVE PARTICIPATED IN THE CONSPIRACY ALLEGATION.**
  
4. **Description of case**
  - a. Type of case in  complaint  cross-complaint (describe, including causes of action):  
**SEE DEFENDANTS CMC STATEMENT IDENTIFYING THE ALLEGATIONS IN THE COMPLAINT. THE GIST OF PLAINTIFFS COMPLAINT IS THAT DEFENDANT ARAKAL, ASEXUALLY MOLESTED AMBERALOMAS AGE 14 AND RACHEL LOMAS AGE 13 AND ATTEMPTED TO COVER UP HIS ACTIONS WITH THE HELP OF DEF ILLO WHO DEFAMED THE MOTHER PLAINTIFF MACHADO AND THE DIOCESE WHO HAD NOTICE OF ILLO AND ARAKALS ILLEGAL BEHAVIOR.**

SCANNED

PLAINTIFF/PETITIONER: <b>MACHADO E.T. A.L.</b>	CASE NUMBER:
DEFENDANT/RESPONDENT: <b>ILLO E.T.A.L.</b>	<b>CV018440</b>

10. d. The party or parties are willing to participate in (check all that apply):
- (1)  Mediation
  - (2)  Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
  - (3)  Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
  - (4)  Binding judicial arbitration
  - (5)  Binding private arbitration
  - (6)  Neutral case evaluation
  - (7)  Other (specify):
- e.  This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f.  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g.  This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court (specify exemption):

11. **Settlement conference**

- The party or parties are willing to participate in an early settlement conference (specify when):

12. **Insurance**

- a.  Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (explain):

13. **Jurisdiction**

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- Bankruptcy  Other (specify):

Status:

14. **Related cases, consolidation, and coordination**

- a.  There are companion, underlying, or related cases.
- (1) Name of case:
  - (2) Name of court:
  - (3) Case number:
  - (4) Status:
- Additional cases are described in Attachment 14a.
- b.  A motion to  consolidate  coordinate will be filed by (name party):

15. **Bifurcation**

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. **Other motions**

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):
- MOTIONS TO COMPEL DISCOVERY RESPONSES AS SOME OF THE DEFENDANTS HAVE INDICATED THAT CERTAIN PIECES OF VITAL INFORMATION WILL NOT BE PRODUCED, THAT ARE KEY TO PLAINTIFFS PROVING THEIR CASE?**



PLAINTIFF/PETITIONER: <b>MACHADO E. T. A.A.L.</b>	CASE NUMBER: <b>CV018440</b>
DEFENDANT/RESPONDENT: <b>ILLO E.T.A.A.L.</b>	

4. b. Provide a brief statement of the case, including any damages. (If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)

**SEE DEFENDANT ROMAN CATHOLIC BISHOPS OF STOCKTONS STATEMENT**

(If more space is needed, check this box and attach a page designated as Attachment 4b.)

5. **Jury or nonjury trial**  
 The party or parties request  a jury trial  a nonjury trial (if more than one party, provide the name of each party requesting a jury trial):

6. **Trial date**  
 a.  The trial has been set for (date):  
 b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint (if not, explain):

c. Dates on which parties or attorneys will not be available for trial (specify dates and explain reasons for unavailability):  
**JULY 1-10, 2003; AUGUST 10-20, 2003**

7. **Estimated length of trial**  
 The party or parties estimate that the trial will take (check one):  
 a.  days (specify number): **14**  
 b.  hours (short causes) (specify):

8. **Trial representation (to be answered for each party)**  
 The party or parties will be represented at trial  by the attorney or party listed in the caption **AND** by the following:  
 a. Attorney: **ANTHONY BOSKOVICH**  
 b. Firm: **LAW OFFICES OF ANTHONY BOSKOVICH**  
 c. Address: **28 N. FIRST STREET 6TH FLOOR SAN JOSE, CA**  
 d. Telephone number: **408**  
 e. Fax number:  
 f. E-mail address:  
 g. Party represented: **PLAINTIFF**  
 Additional representation is described in Attachment B.

9. **Preference**  
 This case is entitled to preference (specify code section):

10. **Alternative Dispute Resolution (ADR)**  
 a. Counsel  has  has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.  
 b.  All parties have agreed to a form of ADR. ADR will be completed by (date):  
 c.  The case has gone to an ADR process (indicate status):

PLAINTIFF/PETITIONER: <b>MACHADO E.T. A.L.</b>	CASE NUMBER:
DEFENDANT/RESPONDENT: <b>ILLO E.T. A.L.</b>	<b>CV 018440</b>

**17. Discovery**

- a.  The party or parties have completed all discovery.
- b.  The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
PLAINTIFF	FORM INTERROGATORIES, SPECIAL INTER. REQUEST FOR PRODUCTION REQUEST FOR ADMISSIONS TO ALL DEFENDANTS (COMPLETION DATE WILL BE DEPENDANT ON THE LEVEL OF COOPERATION AND THE QUALITY OF RESPONSES GIVEN BY THE DEFENDANTS, FIRST SET OF RESPONSES DUE IN EARLY FEB. 2003)	
PLAINTIFFS	DEPOSITIONS OF DEFENDANTS ARE SET BY NOTICE IN APRIL 2003	

- c.  The following discovery issues are anticipated (*specify*): **MOTIONS TO COMPEL DOCUMENT REQUESTS BY PLAINTIFF**

**18. Economic Litigation**

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

**19. Other issues**

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*): **COURT ORDERED MEDIATION**

**20. Meet and confer**

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court (*if not, explain*): **ONGOING**
- b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following (*specify*):

**21. Case management orders**

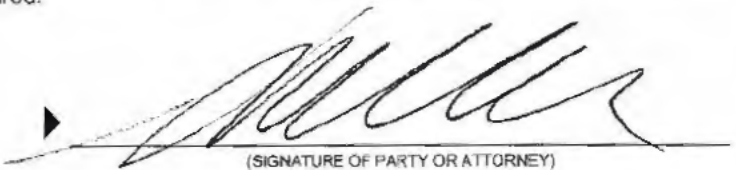
Previous case management orders in this case are (*check one*):  none  attached as Attachment 21.

22. Total number of pages attached (*if any*): 0

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date:

GEORGE J. MACKOUL  
(TYPE OR PRINT NAME)

  
(SIGNATURE OF PARTY OR ATTORNEY)

\_\_\_\_\_  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached

PROOF OF SERVICE

**COMMONWEALTH OF  
MASSACHUSETTS  
BARNSTABLE COUNTY**

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

On January 29, 2003, I served the within: **Case Management Statement**

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

  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.

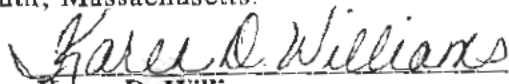
Paul N. Balestracci  
Attorney at Law  
Neumiller & Beardslee  
509 West Weber Avenue, Fifth Floor  
Stockton, California 95203  
(209) 948-8200, (209)-948-4910

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

Anthony Boskovich  
LAW OFFICES OF ANTHONY BOSKOVICH  
28 N. First Street, 6<sup>th</sup> Floor  
San Jose, CA 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 January 29, 2003 at Falmouth, Massachusetts.

  
Karen D. Williams



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Michael D. Coughlan, 124398, COUGHLAN & O'ROURKE LLP 3031 W. March Ln., Suite 210 West, Stockton, CA 95219 TELEPHONE NO.: 209-952-3878 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Defendant, Fr. Francis Arakal Joseph	FOR COURT USE ONLY <div style="text-align: center;"> <b>FILED</b>                      SUPERIOR COURT-STOCKTON                      03 JAN 24 PM 1:11                      CATHERINE HILLSAPS, CLERK                      BY <u>Christopher B...</u>                      DEPUTY                 </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN STREET ADDRESS: 222 E. Weber Ave. MAILING ADDRESS: CITY AND ZIP CODE: Stockton, CA 95202 BRANCH NAME: Stockton Branch	
PLAINTIFF/PETITIONER: KATHLEEN MACHADO, et al  DEFENDANT/RESPONDENT: FR. JOSEPH ILLO, et al	
<div style="text-align: center;"><b>CASE MANAGEMENT STATEMENT</b></div> (Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000) <input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)	CASE NUMBER: CV018440

A CASE MANAGEMENT CONFERENCE is scheduled as follows:

Date: February 6, 2003      Time: 8:45 a.m.      Dept.: 42      Div.:      Room:

Address of court (if different from the address above):

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

1. **Party or parties** (answer one):
  - a.  This statement is submitted by party (name): Defendant, Fr. Francis Arakal Joseph
  - b.  This statement is submitted jointly by parties (names):
  
2. **Complaint and cross-complaint** (to be answered by plaintiffs and cross-complainants only)
  - a. The complaint was filed on (date):
  - b.  The cross-complaint, if any, was filed on (date):
  
3. **Service** (to be answered by plaintiffs and cross-complainants only)
  - a.  All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b.  The following parties named in the complaint or cross-complaint
    - (1)  have not been served (specify names and explain why not):
    - (2)  have been served but have not appeared and have not been dismissed (specify names):
    - (3)  have had a default entered against them (specify names):
  - c.  The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
  
4. **Description of case**
  - a. Type of case in  complaint     cross-complaint    (describe, including causes of action):

Allegations of Civil Battery; Sexual Battery; Negligence Per Se; Intentional and negligent infliction of emotional distress; Slander; Libel and Conspiracy.



PLAINTIFF/PETITIONER: Kathleen Machado, et al	CASE NUMBER: CV018440
DEFENDANT/RESPONDENT: Fr. Joseph Ilo, et al	

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*  
 Minor plaintiffs allege sexual battery by Defendant Joseph, negligence by other parties, infliction of emotional distress by Defendants Ilo and Joseph. Plaintiff Kathleen Machado alleges defamation by Ilo and Joseph with all acts allegedly ratified by other defendants.

*(if more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**  
 The party or parties request  a jury trial  a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**  
 a.  The trial has been set for *(date)*:  
 b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**  
 The party or parties estimate that the trial will take *(check one)*:  
 a.  days *(specify number)*: 8-10  
 b.  hours *(short causes) (specify)*:

8. **Trial representation** *(to be answered for each party)*  
 The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:  
 a. Attorney:  
 b. Firm:  
 c. Address:  
 d. Telephone number:  
 e. Fax number:  
 f. E-mail address:  
 g. Party represented:  
 Additional representation is described in Attachment 8.

9. **Preference**  
 This case is entitled to preference *(specify code section)*:

10. **Alternative Dispute Resolution (ADR)**  
 a. Counsel  has  has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.  
 b.  All parties have agreed to a form of ADR. ADR will be completed by *(date)*:  
 c.  The case has gone to an ADR process *(indicate status)*:

PLAINTIFF/PETITIONER: Kathleen Machado, et al	CASE NUMBER: CV018440
DEFENDANT/RESPONDENT: Fr. Joseph Illo, et al	

10. d. The party or parties are willing to participate in (check all that apply):

- (1)  Mediation
- (2)  Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
- (3)  Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
- (4)  Binding judicial arbitration
- (5)  Binding private arbitration
- (6)  Neutral case evaluation
- (7)  Other (specify):

- e.  This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f.  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g.  This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court (specify exemption): multiple cause of action

11. Settlement conference

- The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a.  Insurance carrier, if any, for party filing this statement (name):
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (explain):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- Bankruptcy  Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a.  There are companion, underlying, or related cases.
  - (1) Name of case:
  - (2) Name of court:
  - (3) Case number:
  - (4) Status:
- Additional cases are described in Attachment 14a.
- b.  A motion to  consolidate  coordinate will be filed by (name party):

15. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):  
Defendant Joseph- Motion for summary Judgment based upon constitutional privileges

PLAINTIFF/PETITIONER: Kathleen Machado, et al	CASE NUMBER: CV018440
DEFENDANT/RESPONDENT: Fr. Joseph Illo, et al	

17. **Discovery**

- a.  The party or parties have completed all discovery.  
 b.  The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Defendants	Depositions of Plaintiffs	June 2003
Defendants	Additional Written Discovery, depositions of witnesses, physicians, Possible medical and/or psychiatric examinations of plaintiffs	unknown

- c.  The following discovery issues are anticipated (*specify*):  
 Defendant anticipates issues involving privacy of defendant and third parties; relevancy, confidentiality; and freedom of religion.

18. **Economic Litigation**

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.  
 b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. **Other issues**

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. **Meet and confer**

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court (*if not, explain*): ongoing  
 b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following (*specify*):

21. **Case management orders**

Previous case management orders in this case are (*check one*):  none  attached as Attachment 21.

22. Total number of pages attached (*if any*):   0  

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: January 23, 2003

Michael D. Coughlan

(TYPE OR PRINT NAME)



(SIGNATURE OF PARTY OR ATTORNEY)

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached

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 January 24, 2003, I served the attached:  
8 Case Management Statement

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

10 George J. MacKoul, Esq.  
11 Sabbah & MacKoul  
12 49 Locust Street  
Falmouth, MA 02540

13 Anthony Boskovich, Esq.  
14 Law Offices of Anthony Boscovich  
28 N. First Street, 6<sup>th</sup> Floor  
15 San Jose, CA 95113

16 Paul N. Balestracci, Esq.  
17 Nuemiller & Beardslee  
P.O. Box 20  
18 Stockton, CA 95201

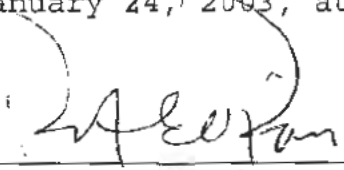
19 BY MAIL:

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

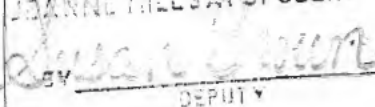
23 [ ] I deposited such envelope in the mail at Stockton,  
California.

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

25 Executed on January 24, 2003, at Stockton, California.

26  
27   
28 Robert E. O'Rourke, Jr.



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Paul N. Balestracci NEUMILLER & BEARDSLEE P.O. Box 20 Stockton, CA 95201-3020 SBN: 083987 TELEPHONE NO.: (209) 948-8200 FAX NO. (Optional): (209) 948-4910 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Def., Roman Catholic Bishop of Stockton,	FOR COURT USE ONLY  <div style="text-align: center;">                     * FILED                      03 JAN 23 PM 3:13                      JOANNE HILLSAAS, CLERK                        DEPUTY                 </div>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN et al. STREET ADDRESS: 222 E. Weber Avenue MAILING ADDRESS: CITY AND ZIP CODE: Stockton, CA 95202 BRANCH NAME: Stockton Branch	
PLAINTIFF/PETITIONER: KATHLEEN MACHADO, et al.  DEFENDANT/RESPONDENT: FR. JOSEPH ILLO, et al.	
<b>CASE MANAGEMENT STATEMENT</b> (Check one): <input checked="" type="checkbox"/> <b>UNLIMITED CASE</b> (Amount demanded exceeds \$25,000)	<input type="checkbox"/> <b>LIMITED CASE</b> (Amount demanded is \$25,000 or less)
	CASE NUMBER: CV 018440

A **CASE MANAGEMENT CONFERENCE** is scheduled as follows:

Date: February 6, 2003 Time: 8:45 a.m. Dept: 42 Div.: Room:

Address of court (if different from the address above):

**INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.**

1. **Party or parties (answer one):**
  - a.  This statement is submitted by party (name): Defendants, The Roman Catholic Bishop of Stockton,
  - b.  This statement is submitted jointly by parties (names): Fr. Joseph Illo, Bishop Stephen E. Blaire, and Msgr. Richard J. Ryan.
  
2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
  - a. The complaint was filed on (date): September 10, 2002
  - b.  The cross-complaint, if any, was filed on (date):
  
3. **Service (to be answered by plaintiffs and cross-complainants only)**
  - a.  All parties named in the complaint and cross-complaint have been served, or have appeared, or have been dismissed.
  - b.  The following parties named in the complaint or cross-complaint
    - (1)  have not been served (specify names and explain why not):
    - (2)  have been served but have not appeared and have not been dismissed (specify names):
    - (3)  have had a default entered against them (specify names):
  - c.  The following additional parties may be added (specify names, nature of involvement in case, and the date by which they may be served):
  
4. **Description of case**
  - a. Type of case in  complaint  cross-complaint (describe, including causes of action):  
 (1) Civil Battery; (2) Sexual Battery; (3) Negligence per se; (4) Intentional Infliction of Emotional Distress; (5) Intentional Infliction of Emotional Distress; (6) Slander; (7) Libel; and (8) Conspiracy.

PLAINTIFF/PETITIONER:KATHLEEN MACHADO, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT:FR.JOSEPH ILLO, et al.	CV 018440

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*  
 Minor Plaintiffs claim sexual battery by Defendant Arakal and negligence against other parties for allowing such or failing to respond appropriately. Minor Plaintiffs claim intentional infliction of distress based on conduct of Defendants Illo and Arakal. Adult Plaintiff claims defamation by Defendants Illo and Arakal. All Defendants are claimed to have ratified activities of others.

*(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request  a jury trial  a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a.  The trial has been set for *(date)*:

b.  No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*:

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a.  days *(specify number)*: 10

b.  hours *(short causes) (specify)*:

8. **Trial representation** *(to be answered for each party)*

The party or parties will be represented at trial  by the attorney or party listed in the caption  by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

e. Fax number:

f. E-mail address:

g. Party represented:

Additional representation is described in Attachment 8.

9. **Preference**

This case is entitled to preference *(specify code section)*:

10. **Alternative Dispute Resolution (ADR)**

a. Counsel  has  has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.

b.  All parties have agreed to a form of ADR. ADR will be completed by *(date)*:

c.  The case has gone to an ADR process *(indicate status)*:



PLAINTIFF/PETITIONER: KATHLEEN MACHADO, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: FR. JOSEPH ILLO, et al.	CV 018440

10. d. The party or parties are willing to participate in (check all that apply):

- (1)  Mediation
- (2)  Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
- (3)  Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
- (4)  Binding judicial arbitration
- (5)  Binding private arbitration
- (6)  Neutral case evaluation
- (7)  Other (specify):

- e.  This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
- f.  Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
- g.  This case is exempt from judicial arbitration under rule 1600.5 of the California Rules of Court (specify exemption):  
Multiple causes of action, amount in controversy.

11. Settlement conference

- The party or parties are willing to participate in an early settlement conference (specify when):

12. Insurance

- a.  Insurance carrier, if any, for party filing this statement (name): The Ordinary Mutual.
- b. Reservation of rights:  Yes  No
- c.  Coverage issues will significantly affect resolution of this case (explain): Not anticipated.

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- Bankruptcy  Other (specify):

Status:

14. Related cases, consolidation, and coordination

- a.  There are companion, underlying, or related cases.

- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:

Additional cases are described in Attachment 14a.

- b.  A motion to  consolidate  coordinate will be filed by (name party):

15. Bifurcation

- The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (specify moving party, type of motion, and reasons):

16. Other motions

- The party or parties expect to file the following motions before trial (specify moving party, type of motion, and issues):  
Defendants Blaire and Ryan - summary judgment. They are not the principals.  
Defendants Roman Catholic Bishop, Illo, Blaire, and Ryan - summary judgment/  
adjudication: privilege and freedom of religion.

PLAINTIFF/PETITIONER: KATHLEEN MACHADO, et al.	CASE NUMBER:
DEFENDANT/RESPONDENT: FR. JOSEPH ILLO, et al.	CV 018440

17. **Discovery**

- a.  The party or parties have completed all discovery.  
 b.  The following discovery will be completed by the date specified (*describe all anticipated discovery*):

Party	Description	Date
Defendants	Depositions of Plaintiffs	May 1, 2003
Defendants	Follow-up interrogatories and document request.	Unknown (variable)
Defendants	Third party depositions and document requests.	Unknown (variable)

- c.  The following discovery issues are anticipated (*specify*): Privacy objections, relevancy, confidentiality, and religious freedom issues.

18. **Economic Litigation**

- a.  This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.  
 b.  This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. **Other issues**

- The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):

20. **Meet and confer**

- a.  The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court (*if not, explain*): Parties have had ongoing discussions about the matter.  
 b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following (*specify*):

21. **Case management orders**

Previous case management orders in this case are (*check one*):  none  attached as Attachment 21.

22. Total number of pages attached (*if any*): 0

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: January 22, 2002

Paul N. Balestracci  
 (TYPE OR PRINT NAME)

▶ *Paul N. Balestracci*  
 (SIGNATURE OF PARTY OR ATTORNEY)

\_\_\_\_\_  
 (TYPE OR PRINT NAME)

▶ \_\_\_\_\_  
 (SIGNATURE OF PARTY OR ATTORNEY)

Additional signatures are attached

**PROOF OF SERVICE**

**CCP 1013a**

FILED

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 509 W. Weber Avenue, Stockton, California 95203. On January 23, 2003, I served the within documents:

THE WILLIAMS, CLERK  
BY: [Signature]  
DEPUTY

**CASE MANAGEMENT STATEMENT**

**(BY MAIL)** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than on day after the date of deposit for mailing in affidavit.

**(BY PERSONAL SERVICE)** I delivered such envelope by hand to the address(es) shown below.

**(BY FACSIMILE MACHINE)** I sent such document from facsimile machine (209) 948-4910 on \_\_\_\_\_, 2003. I certify that said transmission was completed and that all pages were received and that a report was generated by facsimile machine (209) 948-4910 which confirms said transmission and receipt. I, thereafter, mailed a copy to the interested party(ies) in this action by placing a true copy thereof enclosed in sealed envelop(s) addressed to the parties listed below

**(BY FEDERAL EXPRESS)** Having placed the document in an envelope(s) or package(s) designated by Federal Express with delivery fees paid or provided for, addressed as stated below, I deposited the envelope(s) or package(s) in a box or other facility regularly maintained by Federal Express or delivered the envelope(s) or package(s) to a courier or driver authorized by Federal Express to receive documents.

George J. MacKoul, Esq.  
SABBAH and MacKOUL  
49 Locust Street  
Falmouth, MA 02540  
Telephone: (508) 495-4955  
*(Attorneys for Plaintiff)*

Anthony Boskovich  
LAW OFFICES OF ANTHONY BOSKOVICH  
28 N. First Street, 6th Floor  
San Jose, CA 95113-1210  
Telephone: (408) 286-5150  
*(Attorney for Plaintiff)*

Michael D. Coughlan, Esq.  
COUGHLAN & O'ROURKE, LLP  
3031 W. March Lane, Ste. 210 West  
Stockton, CA 95219  
*(Attorneys for Defendant, Fr. Francis Arakal)*



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

3 Executed this 23rd day of January 2003, at Stockton, California.

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6 CARY NUNES  
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