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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 REQUEST FOR**  
) **ADMISSIONS, SET NO. 1,**  
) **PROPOUNDED BY PLAINTIFF RACHEL**  
) **LOMAS AND RESPONDED TO BY**  
) **DEFENDANT BISHOP STEVEN BLAIRE.**

) **HEARING DATE: March 3, 2003**  
) **Department: 41**  
) **Time: 9:00 A.M.**

[Filed concurrently with Plaintiffs' Motion to Compel Further Answers to Request for Admissions, Set No. 1]

The following are certain Request for Admissions the responses received verbatim, and the reasons why (further) answers to the requests should be compelled:



1 **REQUEST FOR ADMISSIONS NO. 1 :**

2 Admit that defendant Illo was not suspended\disciplined and\or psychologically evaluated as a  
3 result of the alleged inflammatory remarks made against Jose Munoz, resulting in a lawsuit being  
4 filed against the Diocese of Stockton in 2002.

4 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

5 Defendant objection to this request on the grounds that it seeks information neither relevant nor  
6 calculate to lead to the discovery of an admissible evidence. Further, it invades the privacy of  
7 the Defendant Illo. Further, assignment and discipline of clergy is not a matter with an  
8 jurisdiction of this court is protected by the First Amendment to the United States Constitution as  
9 well as religious freedom portions of the California Constitution.

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

10 The information is relevant to prove that Defendant Blaire had notice of the Defendant  
11 Illo's predisposition to defame employees and parishioners and/or did not take disciplinary  
12 action to prevent future illegal behavior from occurring. It further goes to prove pattern and  
13 practice. It does not invade any privacy rights. The admission is not asking for the details of the  
14 disciplinary action (if any was taken), it is simply asking if any action to prevent further  
15 defamatory behavior by Illo was taken by Bishop Blaire. The admission is not seeking to have  
16 the court adjudicate the assignment or disciplining of clergy, but seeks only to discover whether  
17 or Bishop Blaire took not preventative measures after settlement of the prior lawsuit by the  
18 Diocese.

15 **REQUEST FOR ADMISSIONS NO. 2:**

16 Admit that YOU have never suspended\disciplined and\or had a psychological evaluation of  
17 defendant Illo from his duties as a priest for the allegations of misconduct as so stated in the  
18 complaint in this action.

19 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

20 Defendant objects to this request on the grounds that it seeks information that is neither relevant  
21 nor calculate to lead to the discovery of admissible evidence. Defendant further objects on the  
22 grounds that the request is unintelligible. Defendant further objects in the grounds that is  
23 overbroad, burdensome, and seeks information protected by the religious freedom clauses of  
24 United States in California Constitution's. Also, it is further protected by the right privacy in the  
25 California Constitution.

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

2 The request as stated is intelligible. The complaint clearly states allegations of defamation by  
3 defendant Illo. The request is simply seeking to understand weather or not the Bishop took any  
4 steps to educate and/or prevent Fr. Illo from committing future acts of defamation against others.  
5 The request is not overbroad or burdensome. No explanation is given in the response or in any  
6 attempt to meet and confer on how this admission invades a protected by the right to privacy?  
7 How is this information protected by the religious freedom clauses of both the Federal and State  
8 Constitutions? Objections to the entire set of RFAs, without some attempt to admit or deny in  
9 part, cannot be considered a "good faith" response to RFAs. Such wholesale objections may  
10 result in imposition of sanctions against the responding party. *Cembrook v. Sup.Ct.*, (1961) 56  
11 Cal.2d 423, 428, 15 Cal.Rptr. 127, 130.

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

13 Admit that YOU have no evidence to support and you will not be able to discover evidence to  
14 support YOUR first affirmative defense stated in YOUR answer, that plaintiffs' claims are  
15 barred by the applicable statute of limitations.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

17 Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and  
18 intended to harass. Defendant further objects to the request as improperly phrased in attempts to  
19 obtain a verified response to a complaint which is not verified. It also cause for speculation with  
20 regard to the future discovery of evidence.

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

22 The objections raised are completely inappropriate. Plaintiffs have every right to discover  
23 all facts currently in defendant's possession, or potential legal theories to support each and every  
24 affirmative defense stated in Defendants answer to their complaint. The statute of limitations  
25 defense is governed by a statutory time period. Plaintiff's filed their complaint within the  
applicable statutory time period. If the defenses' position is to the contrary, then they must  
inform the plaintiffs' of each and every fact that would support this affirmative defense. The  
admission is not argumentative. It is not seeking a verified answer to the complaint, but simply  
asking the defense: What Facts does Defendant Have to Support this? Further, as stated above,  
Request for Admissions are proper when asking for matters which, if admitted or deemed true  
(by failure to respond), would result in the **unconditional surrender** of the party on whom they  
are served. See *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395-  
396, 42 Cal.Rptr.2d 260, 261, fn. 8. Therefore, a Request for Admission is proper if it can  
dispose of an affirmative defense or establish an element with regard to any of the plaintiff's  
claims. These Request are not intended to harass but to discover whether or the defendant has  
facts sufficient to support the defense plead.



1 **REQUEST FOR ADMISSIONS NO. 7:**

2 Admit that all You have no evidence to support and YOU will not be able to discover evidence  
3 to support all Your second affirmative defense stated in Your answer, that plaintiffs Rachel and  
4 Amber Lomas (ages 13 and 11 at the time the incident) "did not exercise ordinary care,  
cautioned, or prudence to avoid" unwanted physical contact with defendant Arakal.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

6 Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and  
7 intended to harass. Defendant further objects to the request as improperly phrased in attempts to  
8 obtain a verified response to a complaint which is not verified. It also cause for speculation with  
regard to the future discovery of evidence.

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

10 Defendants affirmative defense, which essentially states that the minor plaintiffs were  
11 negligent or contributed to their own molestation by Fr. Arakal and the facts to support this  
12 defense are discoverable. The request is not overbroad but specifically focuses in on one of the  
13 allegations stated in the complaint. Rather, the affirmative defense as plead is overbroad, and the  
14 request is seeking to narrow its application to the alleged facts. Legal authority does not support  
15 defendant's "harassment" objection. "When discovery requests are grossly overbroad on their  
16 face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable  
17 inference can be drawn of an intent to harass and improperly burden." *Obregon v. Sup.Ct.*  
18 *(Cimm's, Inc.)* (1998) 67 Cal.App.4th 424, 431, 79 Cal.Rptr.2d 62, 66. No such inference can be  
19 drawn here, as the request is narrow, legitimate and necessary to find out what facts defendant  
20 has to support this affirmative defense. Further, as stated above, Request for Admissions are  
21 proper when asking for matters which, if admitted or deemed true (by failure to respond), would  
22 result in the **unconditional surrender** of the party on whom they are served. See *Demyer v.*  
23 *Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395-396, 42 Cal.Rptr.2d 260, 261,  
24 fn. 8. Therefore, a Request for Admission is proper if it can dispose of an affirmative defense or  
25 establish an element with regard to any of the plaintiff's claims.

20 **REQUEST FOR ADMISSIONS NO. 8:**

21 Admit that YOU have no evidence to support and you will not be able to discover evidence to  
22 support YOUR Third Affirmative Defense stated in YOUR answer, that plaintiffs' claims are  
barred by Estoppel.

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 8 :**

24 Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and  
25 intended to harass. Defendant further objects to the request as improperly phrased in attempts to

1 obtain a verified response to a complaint which is not verified. It also cause for speculation with  
2 regard to the future discovery of evidence.

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

4 The same rational applies to these objections as were argued in No. 7 above. The  
5 estoppel defense is equitable and goes to contract not tort. Plaintiffs are entitled to know what  
6 facts defendant has to support this defense

7 **REQUEST FOR ADMISSIONS NO. 9:**

8 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
9 support YOUR Fourth Affirmative Defense stated in all Your answer that plaintiffs  
10 claims\damages are the responsibility of third parties other than YOU, defendant Diocese of  
11 Stockton, Defendant Illo, Defendant Ryan and Defendant Arakal.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

13 Same BOILERPLATE response as given in Response to number 8.

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

15 The request seeks to understand defendant's position with regard to the affirmative  
16 defense plead. Is defendant's position that Fr. Arakal is completely responsible for the alleged  
17 harm by plaintiff's Amber and Rachel? If not is it defendant's contention that some other person  
18 molested them? If defendant denies that a molested occurred at all, then the affirmative defense  
19 has no place in defendants answer, as it is only costing plaintiffs time and money to draft this  
20 letter pursue the information necessary to evaluate this defense as plead. In discovery, just as  
21 defendants are entitled to discover all facts from the plaintiffs that support the allegations stated  
22 in their complaint, so too the plaintiff's are entitled to discover all facts which support each and  
23 every affirmative defense stated in defendants answer. The request is not intended to "harass",  
24 and is relevant based on the legal authority stated above.

25 **REQUEST FOR ADMISSIONS NO. 10:**

Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
support YOUR Fifth Affirmative Defense stated in YOUR answer, that plaintiffs Rachel and  
Amber Lomas, "voluntarily, knowingly and reasonably accepted the risk involved" in being  
sexually molested by Fr. Arakal.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Same BOILERPLATE response as stated in No. 9.



1  
2 **WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

3 Plaintiffs have the right to discover what facts defendants have in their possession to  
4 support that the plaintiff minors "assumed the risk of being molested". The code requires a good  
5 faith basis for pleading an affirmative defense (C.C.P. 128.7). The Request is relevant, narrowly  
6 tailored and intended on narrowing the issues before trial. Therefore it is not harassing.

7 **REQUEST FOR ADMISSIONS NO. 11:**

8 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
9 support YOUR FIFTH Affirmative Defense stated in YOUR answer, that plaintiff Cathleen  
10 Machado "voluntarily, knowingly and reasonably accepted the risk involved" in Defendant Illo  
11 communicating to her eleven year old daughter Rachel Lomas that plaintiff Machado "wanted to  
12 sleep with" Defendant Illo.

13 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

14 Same Boilerplate response as was given in the previous responses.

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

16 This request seeks to understand what facts if any exist to support Defendants fifth  
17 affirmative defense that plaintiff Machado "assumed the risk" of being defamed. Defendant, Fr.  
18 Illo's responses to plaintiffs Request for Admissions, denied ever making these statements. If  
19 this is correct, how does plaintiff "assume the risk of being defamed" if no defamation occurred?  
20 Defendant continues with boilerplate objections intent to obstruct plaintiffs from obtaining  
21 legitimate discovery mandated by law. The request is not overbroad, as it seeks specific  
22 information plead in the complaint.

23 **REQUEST FOR ADMISSIONS NO. 12:**

24 Admit that YOU have no evidence to support and YOU will not be able (to) discover evidence to  
25 support YOUR SEVENTH Affirmative Defense stated in YOUR answer, that plaintiffs Rachel  
Lomas and Amber Lomas consented to the acts of Defendant Arakal as so stated in the complaint  
by plaintiffs.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12 :**

Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and  
intended to harass. Defendant further objects to the request as improperly phrased in attempts to  
obtain a verified response to a complaint, which is not verified. It also calls for speculation with  
regard to the future discovery of evidence.

1 (Same Boilerplate Objection)

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

3 The request simply seeks to understand what facts, if any; the Diocese has to support this  
4 affirmative defense. If the Diocese is denying that the acts of molestation never occurred, how  
5 could have plaintiffs Amber Lomas and Rachel Lomas consented to something that never  
6 happened? Further, consent is not a defense to sexual contact with a minor.

7 **REQUEST FOR ADMISSIONS NO. 13:**

8 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
9 support YOUR SEVENTH Affirmative Defense stated in YOUR Answer, that plaintiff Kathleen  
10 Machado consented to the acts of Defendant Illo as so stated in the complaint by plaintiff s.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

12 Same boilerplate objection

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

14 This request is seeking to discover facts, which would support defendant's affirmative  
15 defense, namely that Plaintiff Machado consented to being defamed. What facts does defendant  
16 have to support this? Again, defendant's boilerplate objections are inappropriate and intended to  
17 prevent discovery of this information, which under the code and the case law cited above,  
18 plaintiffs' are entitled to.

19 **REQUEST FOR ADMISSIONS NO. 14 :**

20 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
21 support YOUR EIGHT Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel and  
22 Amber Lomas "failed to act with clean hands in the matters raised in the complaint".

23 **RESPONSE TO REQUEST FOR ADMISSION NO. 14 :**

24 Same boilerplate response

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

This request is seeking to discover facts, which would support defendants affirmative  
defense, namely that two minors acted with unclean hands with regard to each and every  
allegation stated in complaint. What facts does defendant have to support this equitable defense?



1 Again, defendant's boilerplate objections are inappropriate and intended to prevent  
2 discovery of this information, which under the code, and case law cited herein, plaintiffs' are  
3 entitled to.

4 **REQUEST FOR ADMISSIONS NO. 15:**

5 Admit that You have no evidence to support and YOU will not be able to discover evidence to  
6 support YOUR EIGHTH Affirmative Defense stated in YOUR answer, that plaintiff Kathleen  
7 Machado "failed to act with clean hands in the matters raised in the complaint"

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

9 Same Boilerplate response.

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

11 Same arguments as stated in No. 14 above.

12  
13 **REQUEST FOR ADMISSIONS NO. 16:**

14 Admit that YOU have no evidence to support and YOU will not be able [to] discover evidence to  
15 support YOUR NINTH Affirmative Defense stated in YOUR answer, that plaintiff Kathleen  
16 Machado alleged injuries "if any were proximately caused by intervening or supervising (meant  
17 to be supervening) causes."

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

19 Same Boilerplate response.

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

21 This request is seeking to discover facts, which would support defendant's affirmative  
22 defense, namely that Ms. Machado's damages were caused by third party's who's acts  
23 superceded or intervened with the defendant's proposed liability. Again, defendant's boilerplate  
24 objections are inappropriate and intended to prevent discovery of this information, which under  
25 the code, and case law cited above, plaintiffs' are entitled to.

26 **REQUEST FOR ADMISSIONS NO. 25:**

Admit that defendant Illo was never suspended and or disciplined in any manner by YOU for the  
alleged defamatory remarks made to Jose Munoz.

1  
2 **RESPONSE TO REQUEST FOR ADMISSION NO. 25 :**

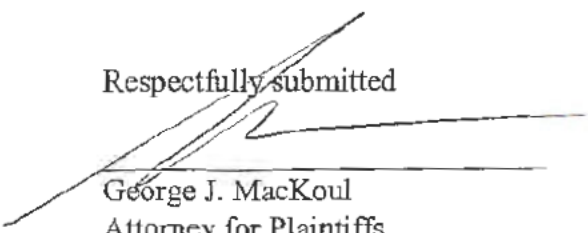
3 Defendant objects to this request on the grounds that it seeks information which is neither  
4 relevant nor calculated to lead to the discovery of admissible evidence.

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

6 Fr. Illo's prior defamatory behavior is relevant to prove a common pattern or practice by  
7 which he defames employees and parishioners by defaming and intimidating them, in order to  
8 maintain control. It is relevant and discoverable.

9 Dated: February 9, 2004

10 Respectfully submitted

11   
12 \_\_\_\_\_  
13 George J. MacKoul  
14 Attorney for Plaintiffs  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

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 February 9, 2004 I served the within: **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL PROPER RESPONSES TO REQUEST FOR ADMISSIONS PROPOUNDED BY PLAINTIFF RACHEL LOMAS TO THE DEFENDANT BISHOP STEVEN BLAIRE; REQUEST FOR SANCTIONS PURSUANT TO C.C.P. 2023 AGAINST DEFENDANT BISHOP STEVEN BLAIRE AND/OR THEIR COUNSEL OF RECORD, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION, DECLARATION OF GEORGE J. MACKOUL IN SUPPORT OF MOTION TO COMPEL CALIFORNIA RULES OF COURT 335 STATEMENT OF QUESTIONS AND ANSWERS IN DISPUTE.**

\_\_\_\_\_ 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.

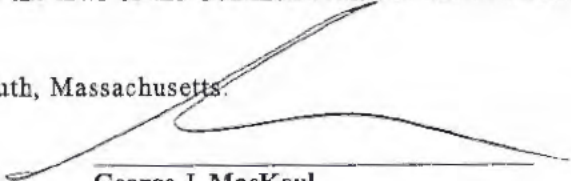
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I declare under penalty of perjury under the laws of the Commonwealth of Massachusetts that the above is true and correct.

Executed on February 9, 2004 at Falmouth, Massachusetts.

  
George J. MacKoul



JE FILED

04 FEB 13 PM 1:23

*Pamela Edwards*  
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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**  
) **ADMISSIONS, SET NO. 1,**  
) **PROPOUNDED BY PLAINTIFF RACHEL**  
) **LOMAS AND RESPONDED TO BY**  
) **DEFENDANT DIOCESE OF STOCKTON.**

) **HEARING DATE: March 3, 2003**  
) **Department: 41**  
) **Time: 9:00 A.M.**

) **[Filed concurrently with Plaintiffs' Motion**  
) **to Compel Further Answers to Request for**  
) **Admissions, Set No. 1]**

26 The following are certain Request for Admissions the responses received verbatim, and  
27 the reasons why (further) answers to the requests should be compelled:  
28  
29  
30

1 **REQUEST FOR ADMISSIONS NO. 10 :**

*not met by question*

*2c to up notice of claim?*

2 Admit that YOU had actual notice of the allegations of misconduct by Fr. Francis Arakal with  
3 regard to Plaintiff's Amber and Rachel Lomas in January of 2002 in a letter mailed to Bishop  
4 Steven Blaire from Kathleen Machado in January of 2002.

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

6 Defendant objects to this request on the grounds that it seeks information protected by the right  
7 of privacy contained in the California Constitution. If further seeks information which is neither  
8 relevant nor calculated to lead to the discovery admissible evidence.

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

9 There is no right to privacy in establishing weather or not a party had legal notice of a  
10 civil wrong. Plaintiff Machado mailed the Defendant Bishop a letter in January of 2002, advising  
11 him of inappropriate behavior towards her daughters by Defendant, Fr. Arakal. The admission is  
12 relevant to prove notice of sexual abuse to the Diocese and respondent superior liability plead in  
13 the complaint.

13 **REQUEST FOR ADMISSIONS NO. 11 :**

14 Admit that YOUR priest have a duty/responsibility to report to YOU any allegations of  
15 misconduct by any employee/agent of YOUR diocese

16 **RESPONSE TO REQUEST FOR ADMISSION NO.11:**

17 Defendant objects to this request on the grounds that it seeks a legal conclusion. Defendant  
18 further objects the characterization of the duty to this defendant, which has not claimed  
19 breaching duty towards itself.

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

20 Defendant's objections are illogical and in **direct contradiction** of current case law. It is  
21 not grounds for an objection that the request calls for an "opinion" or "conclusion" of facts  
22 known to the propounder of the requests. *Hillman v. Stults* (1968) 263 Cal.App.2d 848, 885, 70  
23 Cal.Rptr. 295, 317. An RFA may properly relate to a matter that is in controversy between the  
24 parties. *Ca Civ Pro* § 2033(a). Requests may be served asking for matters, which if admitted or  
25 deemed true (by failure to respond), would result in the **unconditional surrender** of the party on  
whom they are served. See *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th  
393, 395-396, 42 Cal.Rptr.2d 260, 261, fn. 8] Therefore, a Request for Admission is proper if it  
can dispose of an affirmative defense or establish an element with regard to any of the plaintiff's  
claims. An RFA may also require "an application of law to fact." *Ca Civ Pro* § 2033(a). See  
*Burke v. Sup. Ct.* (1969) 71 Cal.2d 276, 280, 78 Cal.Rptr. 481, 487--whether attachment levy was



1 "regular on its face"; and *Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 735, 34 Cal.Rptr.2d  
2 283, 289--whether employer was "negligent" and whether such negligence was "legal cause" of  
3 P's injuries. There is not justification for the objections filed by the responding party.

4 **REQUEST FOR ADMISSIONS NO. 12:**

5 Admit that YOU have no evidence to support and you will not be able to discover evidence to  
6 support YOUR first affirmative defense stated in YOUR answer, that plaintiffs' claims are  
7 harred by the applicable statute of limitations.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

9 Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and  
10 intended to harass. Defendant further objects to the request as improperly phrased in attempts to  
11 obtain a verified response to a complaint which is not verified. It also cause for speculation with  
12 regard to the future discovery of evidence.

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

14 The objections raised are completely inappropriate. Plaintiffs have every right to discover  
15 all facts currently in defendant's possession, or potential legal theories to support each and every  
16 affirmative defense stated in Defendants answer to their complaint. The statute of limitations  
17 defense is governed by a statutory time period. Plaintiff's filed their complaint within the  
18 applicable statutory time period. If the defenses' position is to the contrary, then they must  
19 inform the plaintiffs' of each and every fact that would support this affirmative defense. The  
20 admission is not argumentative. It is not seeking a verified answer to the complaint, but simply  
21 asking the defense: What Facts does Defendant Have to Support this? Further, as stated above,  
22 Request for Admissions are proper when asking for matters which, if admitted or deemed true  
23 (by failure to respond), would result in the **unconditional surrender** of the party on whom they  
24 are served. See *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395-  
25 396, 42 Cal.Rptr.2d 260, 261, fn. 8. Therefore, a Request for Admission is proper if it can  
dispose of an affirmative defense or establish an element with regard to any of the plaintiff's  
claims. These Request are not intended to harass but to discover whether or the defendant has  
facts sufficient to support the defense plead.

26 **REQUEST FOR ADMISSIONS NO. 13:**

27 Admit that all You have no evidence to support and YOU will not be able to discover evidence  
28 to support all Your second affirmative defense stated in Your answer, that plaintiffs Rachel and  
29 Amber Lomas (ages 13 and 11 at the time the incident) "did not exercise ordinary care,  
30 cautioned, or prudence to avoid" unwanted physical contact with defendant Arakal.



1 **RESPONSE TO REQUEST FOR ADMISSION NO. 13 (first):**

2 Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and  
3 intended to harass. Defendant further objects to the request as improperly phrased in attempts to  
4 obtain a verified response to a complaint which is not verified. It also cause for speculation with  
5 regard to the future discovery of evidence.

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

7 Defendants affirmative defense, which essentially states that the minor plaintiffs were  
8 negligent or contributed to their own molestation by Fr. Arakal and the facts to support this  
9 defense are discoverable. The request is not overbroad but specifically focuses in on one of the  
10 allegations stated in the complaint. Rather, the affirmative defense as plead is overbroad, and the  
11 request is seeking to narrow its application to the alleged facts. Legal authority does not support  
12 defendant's "harassment" objection. "When discovery requests are grossly overbroad on their  
13 face, and hence do not appear reasonably related to a legitimate discovery need, a reasonable  
14 inference can be drawn of an intent to harass and improperly burden." *Obregon v. Sup.Ct.*  
15 (*Cimm's, Inc.*) (1998) 67 Cal.App.4th 424, 431, 79 Cal.Rptr.2d 62, 66. No such inference can be  
16 drawn here, as the request is narrow, legitimate and necessary to find out what facts defendant  
17 has to support this affirmative defense. Further, as stated above, Request for Admissions are  
18 proper when asking for matters which, if admitted or deemed true (by failure to respond), would  
19 result in the **unconditional surrender** of the party on whom they are served. See *Demyer v.*  
20 *Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395-396, 42 Cal.Rptr.2d 260, 261,  
21 fn. 8. Therefore, a Request for Admission is proper if it can dispose of an affirmative defense or  
22 establish an element with regard to any of the plaintiff's claims.

23 **REQUEST FOR ADMISSIONS NO. 13 (second):**

24 Admit that YOU have no evidence to support and you will not be able to discover evidence to  
25 support YOUR Third Affirmative Defense stated in YOUR answer, that plaintiffs' claims are  
barred by Estoppel.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13 :**

Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and  
intended to harass. Defendant further objects to the request as improperly phrased in attempts to  
obtain a verified response to a complaint, which is not verified. It also calls for speculation with  
regard to the future discovery of evidence.

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

2 The same rationale applies to these objections as were argued in No. 13 (second) above.  
3 The estoppel defense is equitable and goes to contract not tort. Plaintiffs are entitled to know  
4 what facts defendant has to support this defense.

5 **REQUEST FOR ADMISSIONS NO. 14:**

6 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
7 support YOUR Fourth Affirmative Defense stated in all Your answer that plaintiffs  
8 claims/damages are the responsibility of third parties other than YOU, defendant Diocese of  
9 Stockton, Defendant Illo, Defendant Ryan and Defendant Arakal.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

11 Same BOILERPLATE response as given in Response to No. 13.

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

13 The request seeks to understand defendant's position with regard to the affirmative  
14 defense plead. Is defendant's position that Fr. Arakal is completely responsible for the alleged  
15 harm by plaintiff's Amber and Rachel? If not is it defendant's contention that some other person  
16 molested them? If defendant denies that a molested occurred at all, then the affirmative defense  
17 has no place in defendant's answer, as it is only costing plaintiffs time and money to draft this  
18 letter pursue the information necessary to evaluate this defense as plead. In discovery, just as  
19 defendants are entitled to discover all facts from the plaintiffs that support the allegations stated  
20 in their complaint, so too the plaintiff's are entitled to discover all facts which support each and  
21 every affirmative defense stated in defendant's answer. The request is not intended to "harass",  
22 and is relevant based on the legal authority stated above.

23 **REQUEST FOR ADMISSIONS NO. 15:**

24 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
25 support YOUR Fifth Affirmative Defense stated in YOUR answer, that plaintiffs Rachel and  
Amber Lomas, "voluntarily, knowingly and reasonably accepted the risk involved" in being  
sexually molested by Fr. Arakal.

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Same BOILERPLATE response as stated in No. 14



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

2 Plaintiffs have the right to discover what facts defendants have in their possession to  
3 support that the plaintiff minors "assumed the risk of being molested". The code requires a good  
4 faith basis for pleading an affirmative defense (C.C.P. 128.7). The Request is relevant, narrowly  
5 tailored and intended on narrowing the issues before trial. Therefore it is not harassing.

6 **REQUEST FOR ADMISSIONS NO. 16:**

7 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
8 support YOUR FIFTH Affirmative Defense stated in YOUR answer, that plaintiff Cathleen  
9 Machado "voluntarily, knowingly and reasonably accepted the risk involved" in Defendant Illo  
10 communicating to her eleven year old daughter Rachel Lomas that plaintiff Machado "wanted to  
11 sleep with" Defendant Illo.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

13 Same Boilerplate response as was given in the previous responses.

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

15 This request seeks to understand what facts if any exist to support Defendants fifth  
16 affirmative defense that plaintiff Machado "assumed the risk" of being defamed. Defendant, Fr.  
17 Illo's responses to plaintiffs Request for Admissions, denied ever making these statements. If  
18 this is correct, how does plaintiff "assume the risk of being defamed" if no defamation occurred?  
19 Defendant continues with boilerplate objections intent to obstruct plaintiffs from obtaining  
20 legitimate discovery mandated by law. The request is not overbroad, as it seeks specific  
21 information plead in the complaint.

22 **REQUEST FOR ADMISSIONS NO. 17:**

23 Admit that YOU have no evidence to support and YOU will not be able (to) discover evidence to  
24 support YOUR SEVENTH Affirmative Defense stated in YOUR answer, that plaintiffs Rachel  
25 Lomas and Amber Lomas consented to the acts of Defendant Arakal as so stated in the complaint  
by plaintiffs.

**RESPONSE TO REQUEST FOR ADMISSION NO. 17 :**

Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and  
intended to harass. Defendant further objects to the request as improperly phrased in attempts to  
obtain a verified response to a complaint, which is not verified. It also calls for speculation with  
regard to the future discovery of evidence.

(Same Boilerplate Objection)

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

2 The request simply seeks to understand what facts, if any; the Diocese has to support this  
3 affirmative defense. If the Diocese is denying that the acts of molestation never occurred, how  
4 could have plaintiffs Amber Lomas and Rachel Lomas consented to something that never  
happened? Further, consent is not a defense to sexual contact with a minor.

5 **REQUEST FOR ADMISSIONS NO. 18:**

6 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
7 support YOUR SEVENTH Affirmative Defense stated in YOUR Answer, that plaintiff Kathleen  
Machado consented to the acts of Defendant Illo as so stated in the complaint by plaintiff's.

8 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

9 Same boilerplate objection

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

11 This request is seeking to discover facts, which would support defendant's affirmative  
12 defense, namely that Plaintiff Machado consented to being defamed. What facts does defendant  
13 have to support this? Again, defendant's boilerplate objections are inappropriate and intended to  
14 prevent discovery of this information, which under the code and the case law cited above,  
plaintiffs' are entitled to.

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

16 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
17 support YOUR EIGHT Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel and  
Amber Lomas "failed to act with clean hands in the matters raised in the complaint".

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 19 :**

19 Same boilerplate response

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

22 This request is seeking to discover facts, which would support defendants affirmative  
23 defense, namely that two minors acted with unclean hands with regard to each and every  
24 allegation stated in complaint. What facts does defendant have to support this equitable defense?

25 Again, defendant's boilerplate objections are inappropriate and intended to prevent  
discovery of this information, which under the code, and case law cited herein, plaintiffs' are  
entitled to.



1 **REQUEST FOR ADMISSIONS NO. 20:**

2 Admit that You have no evidence to support and YOU will not be able [to] discover evidence to  
3 support YOUR EIGHTH Affirmative Defense stated in YOUR answer, that plaintiff Kathleen  
4 Machado “failed to act with clean hands in the matters raised in the complaint”

5 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

6 Same Boilerplate response.

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

8 Same arguments as stated in No. 19 above.

9 **REQUEST FOR ADMISSIONS NO. 21 :**

10 Admit that YOU have no evidence to support and YOU will not be able [to] discover evidence to  
11 support YOUR NINTH Affirmative Defense stated in YOUR answer, that plaintiff Kathleen  
12 Machado alleged injuries “if any were proximately caused by intervening or supervising (meant  
13 to be supervening) causes.”

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

15 Same Boilerplate response.

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

17 This request is seeking to discover facts, which would support defendant’s affirmative  
18 defense, namely that Ms. Machado’s damages were caused by third party’s who’s acts  
19 superceded or intervened with the defendant’s proposed liability. Again, defendant’s boilerplate  
20 objections are inappropriate and intended to prevent discovery of this information, which under  
the code, and case law cited above, plaintiffs’ are entitled to.

21 **REQUEST FOR ADMISSIONS NO. 25:**

22 Admit that defendant Illo was never suspended and or disciplined in any manner by YOU for the  
23 alleged defamatory remarks made to Jose Munoz.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 25 :**

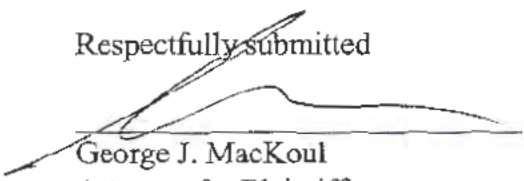
25 Defendant objects to this request on the grounds that it seeks information which is neither  
relevant nor calculated to lead to the discovery of admissible evidence.

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

2 Fr. Illo's prior defamatory behavior is relevant to prove a common pattern or practice by  
3 which he defames employees and parishioners by defaming and intimidating them, in order to  
4 maintain control. It is relevant and discoverable.

5 Dated: February 9, 2004

6 Respectfully submitted

7   
8 George J. MacKoul  
9 Attorney for Plaintiffs  
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PROOF OF SERVICE

COMMONWEALTH OF  
MASSACHUSETTS  
BARNSTABLE COUNTY

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

On February 9, 2004 I served the within: **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL PROPER RESPONSES TO REQUEST FOR ADMISSIONS PROPOUNDED BY PLAINTIFF RACHEL LOMAS TO THE DEFENDANT DIOCESE OF STOCKTON; REQUEST FOR SANCTIONS PURSUANT TO C.C.P. 2023 AGAINST DEFENDANT DIOCESE OF STOCKTON AND/OR THEIR COUNSEL OF RECORD, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION, DECLARATION OF GEORGE J. MACKOUL IN SUPPORT OF MOTION TO COMPEL CALIFORNIA RULES OF COURT 335 STATEMENT OF QUESTIONS AND ANSWERS IN DISPUTE.**

\_\_\_\_\_ 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.

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

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

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

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

Executed on February 9, 2004 at Falmouth, Massachusetts.

  
George J. MacKoul

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

8 Anthony Boskovich (Bar No. 121198)  
9 LAW OFFICES OF ANTHONY BOSKOVICH  
10 28 North First Street, 6<sup>th</sup> Floor  
11 San Jose, California 95113-1210  
12 Phone: 408-286-5150  
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

15 SUPERJIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 \$ 36.30 - 200402108076

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

21 vs. )

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

27 Case No.: CV018440  
28 **PLAINTIFF'S NOTICE OF MOTION  
29 AND MOTION TO COMPEL PROPER  
30 RESPONSES TO REQUEST FOR  
31 ADMISSIONS PROPOUNDED BY  
32 PLAINTIFF RACHEL LOMAS TO THE  
33 DEFENDANT BISHOP STEVEN  
34 BLAIRE; REQUEST FOR SANCTIONS  
35 PURSUANT TO C.C.P. 2023 AGAINST  
36 DEFENDANT BISHOP STEVEN BLAIRE  
37 AND/OR THEIR COUNSEL OF  
38 RECORD, MEMORANDUM OF POINTS  
39 AND AUTHORITIES IN SUPPORT OF  
40 MOTION, DECLARATION OF GEORGE  
41 J. MACKOUL IN SUPPORT OF MOTION  
42 TO COMPEL.**

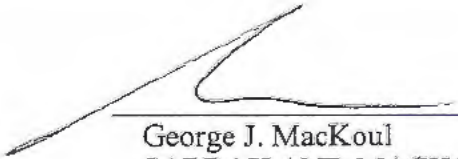
43 **[Filed Concurrently with Separate  
44 Statement Of Questions and Answers in  
45 Dispute, Pursuant to California Rule of  
46 Court 335]**

47 YOU ARE HEREBY NOTIFIED THAT at 9 a.m. on March 3, 2004 or as soon  
48 thereafter as the matter can be heard, in Department 41 of this Court, Plaintiff will move this

1 Court for an order compelling defendant Bishop Steven Blaire to furnish further responses to  
2 Request for Admissions, Set no. 1, propounded by plaintiff Rachael Lomas and shown on the  
3 Statement of Questions and Answers in Dispute, (Rule of Court 335) attached hereto and served  
4 and filed separately herewith; and also for an order that said defendant pay a monetary sanction  
5 to moving party in the sum of \$1,236.30 for the reasonable expenses and attorney's fees  
6 incurred by the moving party in connection with this proceeding. This motion will be made on  
7 the grounds that the defendants responses to the Request for Admission are relevant to the  
8 subject matter of this action, and do not relate to privileged matters, and that the said defendant's  
9 refusal to properly and thoroughly answer same is without substantial justification.

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

12  
13 Dated: February 9, 2004

14   
15 George J. MacKoul  
16 SABBAH AND MACKOUL  
17 Attorneys for the Plaintiffs  
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II.

WHERE RESPONSES TO REQUEST FOR ADMISSIONS HAVE BEEN TIMELY FILED BUT ARE DEEMED DEFICIENT BY THE REQUESTING PARTY (E.G., BECAUSE OF OBJECTIONS OR EVASIVE RESPONSES) THE PROPOUNDING PARTY MAY MOVE FOR AN ORDER COMPELLING FURTHER RESPONSES. CA CIV PRO § 2033(L)

“Objections to the entire set of RFAs, without some attempt to admit or deny in part, cannot be considered a "good faith" response to RFAs. Such **wholesale** objections may result in imposition of sanctions against the responding party *Cembrook v. Sup.Ct.*, (1961) 56 Cal.2d 423, 428, 15 Cal.Rptr. 127, 130. It is not grounds for an objection that the request calls for an "opinion", or that the facts are known to the propounder of the requests. *Hillman v. Stults* (1968) 263 Cal.App.2d 848, 885, 70 Cal.Rptr. 295, 317” See *Weil and Brown Civil Procedure Before Trial*, Chapter 8, Section 8:1356-1359.

The arguments set forth in the moving party’s CRC 335 statement file separately and concurrently herein, clearly shows that the defendant’s response to the request for admissions have no merit and are made to force plaintiff to disprove **false** affirmative defenses and **obstruct** the clarification of potentially uncontested facts.

Therefore further supplemental answers should be ordered by the court to be filed by the defendants, without merit less objections.



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III.

**FURTHER, IT IS NOT PROPER TO OBJECT TO A REQUEST FOR ADMISSION ON THE GROUNDS THAT IT CALLS FOR A LEGAL CONCLUSION OR OPINION.**

An RFA may properly relate to a matter that is in controversy between the parties. *Ca Civ Pro* § 2033(a). "The fact that the request is for the admission of a controversial matter . . . is of no moment." *Cembrook v. Sup. Ct.*, supra, 56 Cal.2d at 429, 15 Cal.Rptr. at 130. Thus, P's request that D admit that "D was driving in excess of the posted speed limit at time and place of accident" is proper. In fact requests may be served asking for matters, which, if admitted or deemed true (by failure to respond), would result in the **unconditional surrender** of the party on whom they are served. E.g., "Admit you have absolutely no grounds to prosecute (or defend) this case." See *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395-396, 42 Cal.Rptr.2d 260, 261, fn. 8. Cited in *Weil and Brown, Civil Procedure Before Trial*, Chapter 8, Section 1297.

"An RFA may also require "an application of law to fact." *Ca Civ Pro* § 2033(a). "Thus, a party may be required to admit or deny who is the "owner" of property; or whether the driver of a car had the owner's "permission or consent"; or whether specified acts were "negligent"; or whether a third person was an "authorized agent" or was acting in the "course and scope of employment," etc. See *Burke v. Sup. Ct.* (1969) 71 Cal.2d 276, 280, 78 Cal.Rptr. 481, 487--whether attachment levy was "regular on its face"; and *Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 735, 34 Cal.Rptr.2d 283, 289--whether employer was "negligent" and whether such negligence was "legal cause" of P's injuries". Cited in *Weil and Brown, Civil Procedure Before Trial*, Chapter 8, Section 1299.

As set forth in the moving party's 335 Statement, the admissions requested were clearly relevant and authorized admissions directed at legal conclusions and opinions set forth in



1 plaintiffs' complaint. They are valid questions, which were met with invalid responses. An order  
2 by this court to the defendant is appropriate and necessary to narrow the issues before trial and  
3 further save this plaintiff from the cost of proving these issues.

4  
5 IV.

6 **DEFENDANT HAS A DUTY TO RESPOND FULLY TO REQUEST FOR ADMISSIONS.**

7 The code requires that a party who responds to request for admissions has a duty to  
8 provide complete and straightforward responses. Each answer "**shall** be as complete and  
9 straightforward as the information reasonably available to the responding party permits." *Ca Civ*  
10 *Pro* § 2033(f)(1) (Emphasis added)

11 Thus, absent a **valid** objection, the response **must** contain one of the following:

- 12  
13 • An admission;  
14 • A denial;  
15 • A statement claiming inability to admit or deny. *Ca Civ Pro* § 2033(f)(1).

16 Further, The Discovery Act requires the responding party to undertake a "good faith"  
17 obligation to investigate sources reasonably available to him or her in formulating answers to  
18 RFAs (similar to the duty owed in responding to interrogatories; ). *Ca Civ Pro* § 2033(f); see  
19 *Chodos v. Sup.Ct. (Lowe)* (1963) 215 Cal.App.2d 318, 322, 30 Cal.Rptr. 303, 305.

20 As set forth in the concurrently filed (CRC 335) Statement of Questions and Answers in  
21 Dispute, it is clear that defendant has failed in each of the duties described above. Rather,  
22 objections were filed that were not valid, some not even being recognized by the laws of this  
23 State.

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V.

**THE DEFENDANT HAS NOT MET AND CONFERRED ON THE ISSUES STATED IN THIS MOTION, FORCING PLAINTIFF TO MAKE THIS MOTION. FAILING TO MEET AND CONFER IS "IN AND OF ITSELF" SANCTIONABLE REGARDLESS OF THE OUTCOME OF THIS AND OTHER MOTIONS.**

C.C.P. 2023 (a) (9) states in part: "Notwithstanding the *outcome* of the particular discovery motion, the court **shall** impose a monetary sanction ordering that any party or attorney who fails to confer are required, pay the reasonable, expenses, **including attorney's fees**, incurred by anyone as a result of that conduct." (Emphasis added)

As set forth in the attached declaration of Attorney MacKoul, defendant should be ordered to pay sanctions for the cost and time of bringing this motion because of defendant's failure to meet and confer.

VI.

**BECAUSE THE DEFENDANT FILED EVASIVE/INCOMPLETE RESPONSES AND OBJECTIONS, (WITHOUT SUBSTANTIAL JUSTIFICATION) DEFENDANT "MISUSES THE DISCOVERY PROCESS" [CA CIV PRO § 2023(A)(4)-(6)]; AND SANCTIONS ARE APPROPRIATE FOR THE COST OF BRINGING THIS MOTION.**

Failure to respond to Request for Admissions, evasive responses, and objections lacking substantial justification are "misuses of the discovery process." *Ca Civ Pro* § 2023(a)(4)-(6);

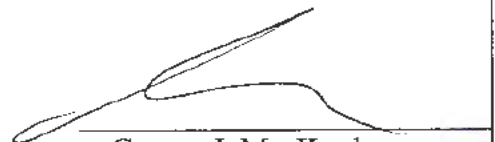
The separate filed CRC 335 Statement, filed concurrently within explains to the court why the responses lack substantial justification for being evasive and incomplete and not containing proper objections.

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**VII.**  
**CONCLUSION**

Based on the foregoing, as well as the arguments set forth in the moving parties separately filed CRC 335 Statement the moving party respectfully requests that the court order the defendant, Bishop Blaire to supplement their responses to Request for Admissions Set No. 1, and further to award the moving party sanctions in accordance with the attached declaration of Attorney MacKoul.

Dated: February 9, 2004



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George J. MacKoul  
SABBAH AND MACKOUL  
Attorneys for the 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 Request for Admission, Set Number 1, mailed by Plaintiff Rachel Lomas to Defendant Bishop Blaire on January 4, 2003.
3. Attached, as Exhibit B is a true and correct copy of Defendants Bishop Blaire's Responses to Request for Admissions Set 1, mailed to Plaintiff's counsel on March 13, 2003.
4. Attached, as Exhibit C is a true and correct copy of a letter dated from plaintiff's counsel to defense counsel, dated June 10, 2003, inviting defense counsel 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 10-6-03 stipulation/letter from defense counsel to plaintiff's counsel granting an open-ended extension of time to file this motion.
6. To date defense counsel has not met and conferred with regard to these responses. Accordingly plaintiff's counsel has no other option but to file this motion.
7. I am requesting the following sanctions for the time it took me to prepare and file this motion.
  - a. June 13, 2003 letter inviting defendant to meet and confer including legal research and drafting time took approximately **4 hours**.

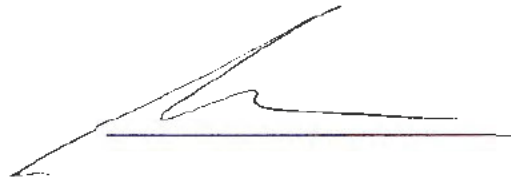
1           b. I spent approximately **2 hours** drafting this notice of motion and motion and  
2           separately filed CRC 335 Statement.

3           8. 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 6 hours of time or (6 x \$200.00 plus filing fee for this  
5           motion of \$36.30) or **\$1,236.30** be awarded to plaintiff's counsel against the defendant  
6           Bishop Blaire, and/or his attorney of record for the cost of bringing this motion.

7           9. I also declare and state that the arguments set forth in my separately filed CRC 335 to be  
8           true and correct and I incorporate those arguments herein by reference as a part of this  
9           declaration.  
10

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

12  
13 Date: February 9, 2004



14           George J. MacKoul  
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# EXHIBIT A



1 George J. MacKoul (Bar No. 170586)  
2 SABBAAH AND MACKOUL  
3 Attorneys and Counselors at Law  
4 49 Locust Street  
5 Falmouth, Mass 02540  
6 Phone: 508-495-4955  
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5 Anthony Boskovich  
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9 Phone: 408-286-5150  
10 Fax: 408-286-5170

11 Attorneys for The Plaintiffs

12 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

13 Kathleen Machado as an individual and as )  
14 Guardian ad Litem for, Rachel Lomas and )  
15 Amber Lomas, )  
16 Plaintiffs, )

Case No.: CV018440

REQUEST FOR ADMISSION

17 vs. )  
18 )

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

24 Propounding Party: Plaintiff, Kathleen Machado

25 Responding Party: Defendant, Bishop Steven Blaire

Set No. 1.

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

1 **DEFINITIONS**

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

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

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

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

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

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

2 Admit that defendant Ilo was not suspended/disciplined and/or psychologically evaluated as a  
3 result of the alleged defamatory remarks made against Jose Munoz, resulting in a lawsuit being  
4 filed against the Diocese of Stockton in 2002.  
5

6 **REQUEST FOR ADMISSION NO.2:**

7 Admit that YOU have never suspended/disciplined and/or had a psychologically evaluation of  
8 defendant Ilo from his duties as a priest for the allegations of his misconduct as so stated in the  
9 complaint in this action.  
10

11 **REQUEST FOR ADMISSION NO.3:**

12 Admit that YOU were mailed a letter from plaintiff Machado in January of 2002, which  
13 contained allegations of unusual conduct, by Defendant Arakal.  
14

15 **REQUEST FOR ADMISSION NO. 4:**

16 Admit that YOU have never suspended/disciplined and/or had a psychologically evaluation of  
17 defendant Arakal from his duties as a priest for the allegations of his misconduct as so stated in  
18 the complaint in this action.  
19

20 **REQUEST FOR ADMISSION NO. 5:**

21 Admit that defendant Arakal is currently serving as a parish priest where he has access to minors.  
22  
23  
24  
25



1 REQUEST FOR ADMISSION NO. 6:

2 Admit that YOU have no evidence to support and you will not be able to discover evidence to  
3 support YOUR First Affirmative Defense Stated in YOUR answer, that plaintiffs claims are  
4 barred by the applicable statute of limitations.

5  
6 REQUEST FOR ADMISSION NO. 7:

7 Admit that YOU have no evidence support and YOU will not be able to discover evidence to  
8 support YOUR Second Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel and  
9 Amber Lomas (ages 13 and 11 at the time of the incident) "did not exercise ordinary care,  
10 caution, or prudence to avoid" sexual contact with Defendant Arakal.

11  
12 REQUEST FOR ADMISSION NO. 8:

13 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
14 support YOUR Third Affirmative Defense Stated in YOUR answer, that plaintiffs claims are  
15 barred by the Estoppel.

16  
17 REQUEST FOR ADMISSION NO. 9:

18 Admit that YOU have no evidence to support and You will not be able to discover evidence to  
19 support YOUR Fourth Affirmative Defense Stated in YOUR answer, that plaintiffs  
20 claims/damages are the responsibility of third parties other than YOU, Defendant Diocese of  
21 Stockton, Defendant Illo, Defendant Ryan and Defendant Arakal.

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

2 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
3 support YOUR FIFTH Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel and  
4 Amber Lomas "voluntarily, knowingly and reasonably accepted the risk involved" in being  
5 sexually molested by Fr. Arakal.  
6

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

8 Admit that YOU have no evidence to support and YOU will not be able to discover evidence to  
9 support YOUR FIFTH Affirmative Defense Stated in YOUR answer, that plaintiff Cathleen  
10 Machado "voluntarily, knowingly and reasonably accepted the risk involved" in Defendant Illo  
11 communicating to her eleven year old daughter Rachel Lomas that plaintiff Machado "wanted to  
12 sleep with" Defendant Illo.  
13

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

15 Admit that YOU have no evidence to support and YOU will not be able discover evidence to  
16 support YOUR SEVENTH Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel  
17 and Amber Lomas consented to the acts of Defendant Arakal as so stated in the complaint by  
18 plaintiffs.  
19

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

21 Admit that YOU have no evidence to support and YOU will not be able discover evidence to  
22 support YOUR SEVENTH Affirmative Defense Stated in YOUR answer, that plaintiff Kathleen  
23 Machado consented to the acts of Defendant Illo as so stated in the complaint by plaintiffs.  
24  
25

1 REQUEST FOR ADMISSION NO. 14:

2 Admit that YOU have no evidence to support and YOU will not be able discover evidence to  
3 support YOUR EIGHTH Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel  
4 and Amber Lomas "failed to act with clean hands in the matters raised in the complaint."  
5  
6

7 REQUEST FOR ADMISSION NO. 15:

8 Admit that YOU have no evidence to support and YOU will not be able discover evidence to  
9 support YOUR EIGHTH Affirmative Defense Stated in YOUR answer, that plaintiff Kathleen  
10 Machado "failed to act with clean hands in the matters raised in the complaint."  
11

12 REQUEST FOR ADMISSION NO. 16:

13 Admit that YOU have no evidence to support and YOU will not be able discover evidence to  
14 support YOUR NINTH Affirmative Defense Stated in YOUR answer, that plaintiff Kathleen  
15 Machado alleged injuries "if any were proximately caused by intervening or supervising causes".  
16

17 REQUEST FOR ADMISSION NO. 17:

18 Admit that YOU have no evidence to support and YOU will not be able discover evidence to  
19 support YOUR NINTH Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel and  
20 Amber Lomas alleged injuries "if any were proximately caused by intervening or supervising  
21 causes."  
22  
23  
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1 **REQUEST FOR ADMISSION NO. 18:**

2 Admit that YOU have no evidence to support YOUR ELEVENTH Affirmative Defense Stated  
3 in YOUR answer, that allegation stated in the complaint are "protected by the United States  
4 Constitution and California Constitution regarding Freedom of Religion".  
5

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

7 Admit to the genuiness of the document attached as Exhibit A, January 9, 2002 letter addressed  
8 to YOU from Plaintiff Machado.  
9

10 **REQUEST FOR ADMISSION NO. 20:**

11 Admit that YOU received and read a copy and/or the original of the document attached as  
12 Exhibit A, before March 15, 2002.  
13

14 **REQUEST FOR ADMISSION NO. 21:**

15 Admit to the genuiness of the document attached as Exhibit B, a March 15, 2002, a letter  
16 authored by YOU and addressed to Defendant Machado.  
17

18 **REQUEST FOR ADMISSION NO. 22:**

19 Admit to the genuiness of the document attached as Exhibit C, a February 20, 2002 letter  
20 addressed to YOU by Plaintiff Machado.  
21

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

23 Admit to the genuiness of the document attached as Exhibit D, a April 29, 2002 authored by  
24 YOU and addressed to Plaintiff Machado.  
25

1 **REQUEST FOR ADMISSION NO. 24:**

2 Admit that YOU read a copy and or the original of the document attached as Exhibit C the same  
3 on or before March 15, 2002.  
4

5 **REQUEST FOR ADMISSION NO. 25:**

6 Admit to the genuiness of the document attached as Exhibit E as being authored by YOU on or  
7 about May of 2002.  
8  
9

10 **REQUEST FOR ADMISSION NO. 26:**

11 Admit that YOU reported to the press (specifically The Modesto Bee) in June of 2002 that the  
12 allegation stated in the complaint by Rachel and Amber Lomas were "relatively minor".  
13  
14

15 **REQUEST FOR ADMISSION NO. 27:**

16 Admit that YOU reported to the press (specifically The Modesto Bee) in June of 2002 that the  
17 allegation stated in the complaint by Rachel and Amber Lomas were "questionable" and  
18 "immediately put in the hands of the police."  
19

20 **REQUEST FOR ADMISSION NO. 28:**

21 Admit to the genuiness of the document attached as Exhibit F.  
22

23 **REQUEST FOR ADMISSION NO. 29:**

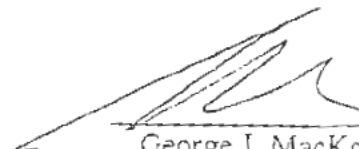
24 Admit to the genuiness of the document attached as Exhibit G, a letter dated January 30, 2002  
25 and addressed to YOU.

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REQUEST FOR ADMISSION NO. 30

Admit that YOU received the original and/or a copy of Exhibit G before June of 2002.

Dated this 4<sup>th</sup> day of January, 2003

  
George J. MacKoul  
SABBAH AND MACKOUL  
Attorneys for the plaintiffs



# EXHIBIT B

1 PAUL N. BALESTRACCI (SBN: 083987)  
NEUMILLER & BEARDSLEE  
2 A PROFESSIONAL CORPORATION  
Post Office Box 20  
3 Stockton, CA 95201-3020  
Telephone: (209) 948-8200  
4 Facsimile: (209) 948-4910

5 Attorneys for Defendants,  
FR. JOSEPH ILLO, MONSIGNOR RICHARD J. RYAN,  
6 BISHOP STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC  
BISHOP OF STOCKTON, a Corporation Sole  
7

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN  
9 STOCKTON BRANCH

10 KATHLEEN MACHADO as an individual and ) Case No. CV 018440  
11 as Guardian Ad Litem for RACHEL LOMAS )  
and AMBER LOMAS ) **RESPONSES TO REQUEST FOR**  
12 ) **ADMISSIONS, SET NO. ONE**  
Plaintiff, )  
13 )  
vs. )  
14 )  
FR. JOSEPH ILLO, FR. FRANCIS JOSEPH, )  
15 a.k.a. FR. FRANCIS ARAKAL, FR. )  
RICHARD RYAN, BISHOP STEVEN )  
16 BLAIRE AND THE DIOCESE OF )  
STOCKTON )  
17 )  
Defendant. )  
18 )

19  
20 PROPOUNDING PARTY: Plaintiff, KATHLEEN MACHADO  
21 RESPONDING PARTY: Defendant, STEPHEN E. BLAIRE  
22 SET NO.: ONE

23 Defendant STEPHEN E. BLAIRE hereby provides the following Responses to Plaintiff  
24 KATHLEEN MACHACO'S Requests for Admissions, Set No. One. These responses are given  
25 while discovery is still in progress and without prejudice to amending the responses based upon  
26 things discovered at a later date, or omitted from these responses as a result of good faith oversight.  
27

RESPONSES TO REQUEST FOR ADMISSIONS

Request to Request No. 1:

Defendant objects to this request on the grounds that it seeks information neither relevant nor calculated to lead to the discovery admissible evidence. Further, it invades the privacy of Defendant, Ill. Further, assignment and discipline of clergy is not a matter within the jurisdiction of this court and is protected by the First Amendment to the United States Constitution as well as religious freedom portions of the California Constitution.

Response to Request No. 2:

Defendant objects to this request on the grounds that it seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that the request is unintelligible. Defendant further objects on the grounds that it is overbroad, burdensome, and seeks information protected by the religious freedom clauses of the United States and California Constitutions. Also, it is further protected by the right of privacy in the California Constitution.

Response to Request No. 3:

Admit letter was received. The characterization of "unusual conduct" is ambiguous, therefore the remainder of the request is denied.

Response to Request No. 4:

Defendant objects to this request on the grounds that it seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence. Defendant further objects on the grounds that the request is unintelligible. Defendant further objects on the grounds that it is compound, overbroad, burdensome, and seeks information protected by the religious freedom clauses of the United States and California Constitutions. Also, it is further protected by the right of privacy in the California Constitution. Without waiving any of those objections, Defendant admits that Father Arakal was placed on administrative leave pending investigation of the allegations.



1 **Response to Request No. 5:**

2 Admit.

3 **Response to Request No. 6:**

4 Defendant objects to this request on the grounds that it is compound, argumentative,  
5 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
6 and attempts to obtain a verified response to a complaint which is not verified.

7 **Response to Request No. 7:**

8 Defendant objects to this request on the grounds that it is compound, argumentative,  
9 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
10 and attempts to obtain a verified response to a complaint which is not verified.

11 **Response to Request No. 8:**

12 Defendant objects to this request on the grounds that it is compound, argumentative,  
13 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
14 and attempts to obtain a verified response to a complaint which is not verified.

15 **Response to Request No. 9:**

16 Defendant objects to this request on the grounds that it is compound, argumentative,  
17 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
18 and attempts to obtain a verified response to a complaint which is not verified.

19 **Response to Request No. 10:**

20 Defendant objects to this request on the grounds that it is compound, argumentative,  
21 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
22 and attempts to obtain a verified response to a complaint which is not verified.

23 **Response to Request No. 11:**

24 Defendant objects to this request on the grounds that it is compound, argumentative,  
25 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
26 and attempts to obtain a verified response to a complaint which is not verified.

1 **Response to Request No. 12:**

2 Defendant objects to this request on the grounds that it is compound, argumentative,  
3 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
4 and attempts to obtain a verified response to a complaint which is not verified.

5 **Response to Request No. 13:**

6 Defendant objects to this request on the grounds that it is compound, argumentative,  
7 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
8 and attempts to obtain a verified response to a complaint which is not verified.

9 **Response to Request No. 14:**

10 Defendant objects to this request on the grounds that it is compound, argumentative,  
11 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
12 and attempts to obtain a verified response to a complaint which is not verified.

13 **Response to Request No. 15:**

14 Defendant objects to this request on the grounds that it is compound, argumentative,  
15 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
16 and attempts to obtain a verified response to a complaint which is not verified.

17 **Response to Request No. 16:**

18 Defendant objects to this request on the grounds that it is compound, argumentative,  
19 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
20 and attempts to obtain a verified response to a complaint which is not verified.

21 **Response to Request No. 17:**

22 Defendant objects to this request on the grounds that it is compound, argumentative,  
23 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
24 and attempts to obtain a verified response to a complaint which is not verified.

25 ///

26 ///

1 **Response to Request No. 18:**

2 Defendant objects to this request on the grounds that it is compound, argumentative,  
3 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased  
4 and attempts to obtain a verified response to a complaint which is not verified.

5 **Response to Request No. 19:**

6 Admit.

7 **Response to Request No. 20:**

8 Admit:

9 **Response to Request No. 21:**

10 Admit.

11 **Response to Request No. 22:**

12 Admit.

13 **Response to Request No. 23:**

14 Defendant objects to this request on the grounds that it seeks a response regarding a  
15 document which was submitted as part of a canonical investigation which is an ecclesiastical matter  
16 and not a proper subject for discovery, as this court has no jurisdiction over the matter. Without  
17 waiving that objection, since the letter was provided to Plaintiff, who has chosen to submit it to this  
18 litigation, the genuineness of the item is admitted.

19 **Response to Request No. 24:**

20 Admit.

21 **Response to Request No. 25:**

22 Admit.

23 **Response to Request No. 26:**

24 Deny.

25 **Response to Request No. 27:**

26 Deny.

1 **Response to Request No. 28:**

2 Defendant, after reasonable inquiry, lacks information or knowledge sufficient to admit the  
3 genuineness of the item and on that basis denies it.

4 **Response to Request No. 29:**

5 There is no Exhibit G attached.

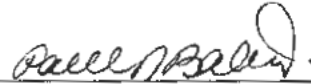
6 **Response to Request No. 30:**

7 There is no Exhibit G attached.

8  
9 Dated: March 13, 2003

NEUMILLER & BEARDSLEE  
A PROFESSIONAL CORPORATION

11  
12 By: \_\_\_\_\_



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



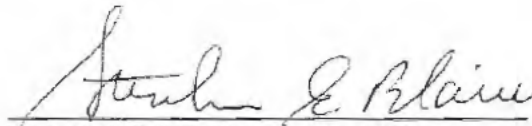
VERIFICATION

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I, BISHOP STEPHEN E. BLAIRE am a Defendant in the above-entitled action. I have read the foregoing **RESPONSES TO REQUEST FOR ADMISSIONS, SET NO. ONE** and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged on information and 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.

Executed this 13th day of March 2003, at Stockton, California.

  
BISHOP STEPHEN E. BLAIRE

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 March 13, 2003, I served the within documents:

6 **RESPONSES TO REQUESTS FOR ADMISSIONS, SET NO. ONE**

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

13  (BY PERSONAL SERVICE) I delivered such envelope by hand to the address(es)  
14 shown below.

15  (BY FACSIMILE MACHINE) I sent such document from facsimile machine (209)  
16 948-4910 on \_\_\_\_\_, 2003. I certify that said transmission was  
17 completed and that all pages were received and that a report was generated by  
18 facsimile machine (209) 948-4910 which confirms said transmission and receipt. I,  
19 thereafter, mailed a copy to the interested party(ies) in this action by placing a true  
20 copy thereof enclosed in sealed envelop(s) addressed to the parties listed below

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

26 **VIA FEDERAL EXPRESS**

27 George Joseph MacKoul, Esq.

28 SABBAH and MacKOUL

49 Locust Street

Falmouth, Mass 02540

Telephone: (508) 495-4955

Facsimile: (508) 495-4115

(Attorneys for Plaintiffs, Kathleen Machado,  
Rachel Lomas, and Amber Lomas)

Anthony Boskovich

Attorney at Law

28 North First Street, 6<sup>th</sup> Floor

San Jose, CA 95113

Telephone: (408) 286-5150

Facsimile: (408) 286-5170

(Co-Counsel for Plaintiffs)

Michael D. Coughlan, Esq.

COUGHLAN & O'ROURKE LLP

3031 W. March Lane #210 West


Stockton, CA 95219

(Attorneys for Defendant, Father Francis  
Arakal)

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

Executed this 13th day of March 2003, at Stockton, California.

  
CARY NUNES

# EXHIBIT C



# SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

49 Locust Street

Falmouth, Massachusetts 02540

508-495-4955

Fax: 508-495-4115

E-mail: sabbahmackoul.com

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

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

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

June 13, 2003

Lomas et. al v. Illo, et. alMachadoC

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

## VIA FACSIMILE AND U.S. MAIL

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

We are in receipt of your responses by Defendant Bishop Steven Blaire's Responses to Request for Admissions, Set No. 1 to Plaintiff's Request for Admissions, set no. 1 mailed to our Falmouth office by overnight mail on March 14, 2003,

In addition the responses propounded by your client, Bishop Steven Blaire are incomplete evasive and contain objections which are not valid. Please consider this letter to be a formal meet and confer letter under the *California Code of Civil Procedure Sections 2033 ET SEQ.* as we are requesting that your office meet and confer regarding the issues set forth in this letter and/or provide supplemental responses to the terms identified on or before **June 27<sup>th</sup> 2003.**

**DEFENDANT, BISHOP STEVEN BLAIRE'S RESPONSES TO REQUEST FOR  
ADMISSIONS SET NO.1**

When responding to RFA's a party must give complete answers: Each answer shall . . . admit so much of the matter involved in the request as is true, either as expressed in the request itself or as reasonably and clearly qualified by the responding party." Ca Civ Pro § 2033(f)(1)(A).

Plaintiff's take very seriously any objections or denials which may force the plaintiff's to prove up the issue at trial. If the responding party is found to have unreasonably denied an RFA, he or she may be ordered to pay the costs and fees incurred by the requesting party in proving that matter. The court is required to impose such sanction ("The court shall make the order . . .") unless the responding party proves an excuse (below). Ca Civ Pro § 2033(o).

Costs may be awarded when the requesting party proves the matter at trial or on a motion for summary judgment. *Barnett v. Penske Truck Leasing* (2001) 90 Cal.App.4th 494, 108 Cal.Rptr.2d 821, 823-824.

If a party who denies a request for admission lacks personal knowledge **but had available sources of information and failed to make a reasonable investigation, the failure will justify an award of sanctions.** *Rosales v. Thermex-Thermatron, Inc.* (1998) 67 Cal.App.4th 187, 198, 78 Cal.Rptr.2d 861, 867-868.

In addition, we are putting you and your clients on notice that should this case proceed to trial and your clients prevail, we will still seek prove up sanctions regardless of the verdict as to each issue you force us to prove. The cost-of-proof sanction is designed to compensate for unnecessary expenses resulting from proving matters unreasonably denied. Thus, the propounding party may be awarded such sanctions even if he or she loses the lawsuit. *Smith v. Circle P Ranch Co., Inc.* (1978) 87 Cal.App.3d 267, 276, 150 Cal.Rptr. 828, 834--\$30,000 **award to losing party.** The sanction is limited to "reasonable expenses incurred . . . including reasonable attorney's fees" in proving matters unreasonably denied. Ca Civ Pro § 2033(o)

We believe the following responses to request for admissions contain improper objections and should be amended. We further note that a majority of your responses are boilerplate and repetitive, which are akin to **wholesale objections**, which case law directly hold as being patently improper. Objections to the entire set of RFAs, without some attempt to admit or deny in part, **cannot be considered a "good faith" response** to RFAs. Such wholesale objections may result in imposition of sanctions against the responding party.

The following is a more specific description of which of your responses, we believe need to be amended:

**REQUEST FOR ADMISSIONS NO. 1 :**

Admit that defendant Illo was not suspended\disciplined and\or psychologically evaluated as a result of the alleged inflammatory remarks made against Jose Munoz, resulting in a lawsuit being filed against the Diocese of Stockton in 2002.

**RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

Defendant objection to this request on the grounds that it seeks information neither relevant nor calculate to lead to the discovery of an admissible evidence. Further, it invades the privacy of the Defendant Illo. Further, assignment and discipline of clergy is not a matter with an jurisdiction of this court is protected by the First Amendment to the United States Constitution as well as religious freedom portions of the California Constitution.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

The information is relevant to prove that Defendant Blaire had notice of the Defendant Illo's predisposition to defame employees and parishioners and/or did not take disciplinary action to prevent future illegal behavior from occurring. It does not invade any privacy rights. The admission is not asking for the details of the disciplinary action (if any was taken), it is simply asking if any action to prevent further defamatory behavior by Illo was taken by Bishop Blaire. The admission is not seeking to have the court adjudicate the assignment or disciplining of clergy, but seeks only to discover weather or Bishop Blaire took not preventative measures after settlement of the prior lawsuit by the Diocese.

**REQUEST FOR ADMISSIONS NO. 2:**

Admit that YOU have never suspended\disciplined and\or had a psychological evaluation of defendant Illo from his duties as a priest for the allegations of misconduct as so stated in the complaint in this action.

**RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

Defendant objects to this request on the grounds that it seeks information that is neither relevant nor calculate to lead to the discovery of admissible evidence. Defendant further objects on the grounds that the request is unintelligible. Defendant further objects in the grounds that is overbroad, burdensome, and seeks information protected by the religious freedom clauses of United States in California Constitution's. Also, it is further protected by the right privacy in the California Constitution.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

The request as stated is intelligible. The complaint clearly states allegations of defamation by defendant Ilo. The request is simply seeking to understand whether or not the Bishop took any steps to educate and/or prevent Fr. Ilo from committing future acts of defamation against others. How is the request overbroad? How is the request burdensome? How is the request protected by the right to privacy? How is this information protected by the religious freedom clauses of both the Federal and State Constitutions? Your objections are without justification, and without legal authority to support the same. Please provide a supplemental response to this request.

**REQUEST FOR ADMISSIONS NO. 6:**

Admit that YOU have no evidence to support and you will not be able to discover evidence to support YOUR first affirmative defense stated in YOUR answer, that plaintiffs' claims are barred by the applicable statute of limitations.

**RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

Defendant objects to this request on the grounds that it is compound, argumentative, overbroad, and intended to harass. Defendant further objects to the request as improperly phrased in attempts to obtain a verified response to a complaint which is not verified. It also causes speculation with regard to the future discovery of evidence.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

The objections raised are completely inappropriate. Plaintiffs have every right to discover all facts currently in your possession, or potential legal theories to support each and every affirmative defense stated in Defendants answer to their complaint. The statute of limitations defense is governed by a statutory time period. Plaintiff's filed their complaint within the applicable statutory time period. If the defenses' position is to the contrary, then they must inform the plaintiffs' of each and every fact that would support this affirmative defense. The admission is not argumentative. It is not seeking a verified answer to the complaint, but simply asking the defense: What Facts Do You Have to Support this?

We are amenable to your compound question objection and we are willing to drop the phrase "you will not be able to discover" but require that you respond to the balance of the request, absent objections.

Please provide supplemental, verified responses to this Request for Admission.

**REQUEST FOR ADMISSIONS NO. 7:**

Admit that all You have no evidence to support and YOU will not be able to discover evidence to support all Your second affirmative defense stated in Your answer, that plaintiffs Rachel and Amber Lomas (ages 13 and 11 at the time the incident) "did not



exercise ordinary care, cautioned, or prudence to avoid" unwanted physical contact with defendant Arakal.

**RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and intended to harass. Defendant further objects to the request as improperly phrased in attempts to obtain a verified response to a complaint which is not verified. It also cause for speculation with regard to the future discovery of evidence.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

Your affirmative defense, which essentially states that my clients were negligent or contributed to their own molestation by Fr. Arakal and the facts to support this defense are discoverable. What facts do you have to support this? The request is not overbroad but specifically focuses in on one of the allegations stated in the complaint. Rather, the affirmative defense as plead is overbroad, and our request is seeking to narrow its application to the alleged facts. Legal authority does not support your "harassment" objection. If you believe we are wrong in this regard, please direct us to authority to support the same. Your objection that we are intending on obtaining a verified answer to our complaint is also incorrect. We are simply seeking to understand what facts you have to support this defense.

We are amenable to your compound question objection and we are willing to drop the phrase "you will not be able to discover" but require that you respond to the balance of the request, absent objections.

Please provide supplemental, verified responses to this Request for Admission.

**REQUEST FOR ADMISSIONS NO. 8:**

Admit that YOU have no evidence to support and you will not be able to discover evidence to support YOUR Third Affirmative Defense stated in YOUR answer, that plaintiffs' claims are barred by Estoppel.

**RESPONSE TO REQUEST FOR ADMISSION NO. 8 :**

Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and intended to harass. Defendant further objects to the request as improperly phrased in attempts to obtain a verified response to a complaint which is not verified. It also cause for speculation with regard to the future discovery of evidence.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

Further, your objections are incorrect. The estoppel defense is a defense in equity, not law. It applies to specific instances of conduct, usually in the context of a contract action. No contract causes of action were plead in the complaint. We are confused by this affirmative defense. Does it apply to the allegations specifically plead by Plaintiff Machado or Plaintiff's Amber and Rachel? What facts do you have to support this affirmative defense? Your harassment, boilerplate objection is an attempt by you and your client to avoid answering these request and in direct contravention of the requirements mandated by C.C.P. 2033.

We are amenable to your compound question objection and we are willing to drop the phrase "you will not be able to discover" but require that you respond to the balance of the request, absent objections.

Please provide supplemental, verified responses to this Request for Admission

**REQUEST FOR ADMISSIONS NO. 9:**

Admit that YOU have no evidence to support and YOU will not be able to discover evidence to support YOUR Fourth Affirmative Defense stated in all Your answer that plaintiffs claims/damages are the responsibility of third parties other than YOU, defendant Diocese of Stockton, Defendant Ilo, Defendant Ryan and Defendant Arakal.

**RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

Same BOILERPLATE response as given in Response to number 8.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

The request seeks to understand your position with regard to the affirmative defense plead. Is it your position that Fr. Arakal is completely responsible for the alleged harm by plaintiff's Amber and Rachel? If not is it your contention that some other person molested them? If you simply deny that they were molested at all, then the affirmative defense has no place in your answer, as it is only costing plaintiff's time and money to draft this letter pursue the information necessary to evaluate this defense as plead. This is discovery and just as defendants are entitled to discover all facts from the plaintiffs that support the allegations stated in their complaint, so too the plaintiff's are entitled to discover all facts which support each and every affirmative defense stated in defendants answer. The request is not intended to "harass", and I do not believe this is a valid objection, but one stated to avoid having to comply with your legal obligations to answer the request. If I am incorrect, please state your authority to support the same.

We are amenable to your compound question objection and we are willing to drop the phrase "you will not be able to discover" but require that you respond to the balance of the request, absent objections.

Please provide supplemental, verified responses to this Request for Admission.

**REQUEST FOR ADMISSIONS NO. 10:**

Admit that YOU have no evidence to support and YOU will not be able to discover evidence to support YOUR Fifth Affirmative Defense stated in YOUR answer, that plaintiffs Rachel and Amber Lomas, “voluntarily, knowingly and reasonably accepted the risk involved” in being sexually molested by Fr. Arakal.

**RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

Same BOILERPLATE response as stated in No. 9.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

Further, what facts do you have to support that Rachel and Amber assumed the risk of being molested? The code requires a good faith basis for pleading an affirmative defense. Therefore, I am assuming you have complied with this rule and have some facts to support this defense. May we have those facts so that we can better evaluate our position? The request is not harassing. We are confused and want to know what facts you have to support this defense.

We are amenable to your compound question objection and we are willing to drop the phrase “you will not be able to discover” but require that you respond to the balance of the request, absent objections.

Please provide supplemental, verified responses to this Request for Admission.

**REQUEST FOR ADMISSIONS NO. 11:**

Admit that YOU have no evidence to support and YOU will not be able to discover evidence to support YOUR FIFTH Affirmative Defense stated in YOUR answer, that plaintiff Cathleen Machado “voluntarily, knowingly and reasonably accepted the risk involved” in Defendant Illo communicating to her eleven year old daughter Rachel Lomas that plaintiff Machado “wanted to sleep with” Defendant Illo.

**RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

Same Boilerplate response as was given in the previous responses.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

Further, this request seeks to understand what facts if any exist to support your fifth affirmative defense that plaintiff Machado “assumed the risk” of being defamed. As

I understand it, from Fr. Illo's responses to our Request for Admissions, he denied ever making these statements. If this is correct, how does one "assume the risk of being defamed" if no defamation occurred? Your defense is illogical and has no merit, if it does then your client has a duty to disclose all facts to support it. Your harassment objection is also obstreperous and designed to prevent plaintiff's from obtaining legitimate discovery mandated by law. The request is not overbroad, as it seeks specific information plead in the complaint. We are not asking you to verify your answer, but to verify facts to support your answer. We believe you have no facts to support this answer.

Please provide a supplemental, unverified response to this discovery.

**REQUEST FOR ADMISSIONS NO. 12:**

Admit that YOU have no evidence to support and YOU will not be able (to) discover evidence to support YOUR SEVENTH Affirmative Defense stated in YOUR answer, that plaintiffs Rachel Lomas and Amber Lomas consented to the acts of Defendant Arakal as so stated in the complaint by plaintiffs.

**RESPONSE TO REQUEST FOR ADMISSION NO. 12 :**

Defendant objects to this request of the grounds that is compound, argumentative, overbroad, and intended to harass. Defendant further objects to the request as improperly phrased in attempts to obtain a verified response to a complaint, which is not verified. It also calls for speculation with regard to the future discovery of evidence.

**(Same Boilerplate Objection)**

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

Further, the request simply seeks to understand what facts, if any, the Diocese has to support this affirmative defense. As I understand it the position of the Diocese is that the acts of molestation never occurred. If this is correct, how could have Amber Lomas and Rachel Lomas consented to something that never happened? The defense as plead is illogical. In the alternative, if you suspect that Fr. Arakal molested the Rachel and Amber, yet deny vicarious responsibility for the same, then what facts do you have to support that they consented to being molested? Isn't it also true that a minor cannot consent to sexual conduct, because of incapacity? This request is not "harassing" but seeks to understand your position.

We are amenable to redacting the "will not be able to discover" language to satisfy you compound question objection.

Please provide supplemental, verified responses to this request.



**REQUEST FOR ADMISSIONS NO. 13:**

Admit that YOU have no evidence to support and YOU will not be able to discover evidence to support YOUR SEVENTH Affirmative Defense stated in YOUR Answer, that plaintiff Kathleen Machado consented to the acts of Defendant Ilo as so stated in the complaint by plaintiff s.

**RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

Same boilerplate objection

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

This request is seeking to discover facts which would support your affirmative defense, namely that Plaintiff Machado consented to being defamed. What facts do you have to support this?

Again, your boilerplate objections are inappropriate and intended to prevent discovery of this information, which under the code, plaintiffs' are entitled to.

We are amenable to dropping the language "will not be able to discover evidence to support" in response to your objection to the form of the question that the request is compound.

Please provide a supplemental, verified response to this request.

**REQUEST FOR ADMISSIONS NO. 14 :**

Admit that YOU have no evidence to support and YOU will not be able to discover evidence to support YOUR EIGHT Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel and Amber Lomas "failed to act with clean hands in the matters raised in the complaint".

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

Same boilerplate response

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

This request is seeking to discover facts, which would support your affirmative defense, namely that two minors acted with unclean hands with regard to each and every allegation stated in complaint. What facts do you have to support this equitable defense.

Again, your boilerplate objections are inappropriate and intended to prevent discovery of this information, which under the code, plaintiffs' are entitled to.

We are amenable to dropping the language "will not be able to discover evidence to support" in response to your objection to the form of the question that the request is compound.

Please provide a supplemental, verified response to this request.

**REQUEST FOR ADMISSIONS NO. 15:**

Admit that You have no evidence to support and YOU will not be able to discover evidence to support YOUR EIGHTH Affirmative Defense stated in YOUR answer, that plaintiff Kathleen Machado "failed to act with clean hands in the matters raised in the complaint"

**RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

Same Boilerplate response.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

Further, this request is seeking to discover facts, which would support your affirmative defense, namely that Ms. Machado acted with unclean hands with regard to each and every allegation stated in complaint. What facts do you have to support this equitable defense.

Again, your boilerplate objections are inappropriate and intended to prevent discovery of this information, which under the code, plaintiffs' are entitled to.

We are amenable to dropping the language "will not be able to discover evidence to support" in response to your objection to the form of the question that the request is compound.

Please provide a supplemental, verified response to this request.

**REQUEST FOR ADMISSIONS NO. 16:**

Admit that YOU have no evidence to support and YOU will not be able [to] discover evidence to support YOUR NINTH Affirmative Defense stated in YOUR answer, that plaintiff Kathleen Machado alleged injuries "if any were proximately caused by intervening or supervising (meant to be supervening) causes."

**RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

Same Boilerplate response.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

This request is seeking to discover facts, which would support your affirmative defense, namely that Ms. Machado's damages were caused by third party's who's acts superceded or intervened with the defendant's proposed liability.

Again, your boilerplate objections are inappropriate and intended to prevent discovery of this information, which under the code, plaintiffs' are entitled to.

We are amenable to dropping the language "will not be able to discover evidence to support" in response to your objection to the form of the question that the request is compound.

Please provide a supplemental, verified response to this request.

**REQUEST FOR ADMISSIONS NO. 25:**

Admit that defendant Illo was never suspended and or disciplined in any manner by YOU for the alleged defamatory remarks made to Jose Munoz.

**RESPONSE TO REQUEST FOR ADMISSION NO. 25 :**

Defendant objects to this request on the grounds that it seeks information which is neither relevant nor calculated to lead to the discovery of admissible evidence.

**WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

The propounding party firmly disagrees with the Defendants position and objections.

Further, Fr. Illo's prior defamatory behavior is relevant to prove a common scheme or plan by which he intimidates employees and parishioners by defaming and intimidating them, in order to maintain control. Your objection, is improper and you must answer the request with a verified supplemental response.

The discovery propounded and the responses requested contain important evidence necessary for the plaintiff(s) to fully and fairly evaluate their claim against your clients. Improper and unfair withholding of this information can only cause unnecessary court delays and do nothing but increase the cost of litigation for all parties. We want to make every effort to avoid utilizing the precious resources of the courts in an effort to

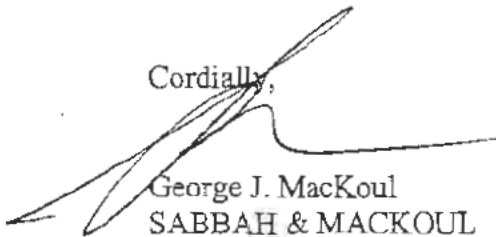
resolve this discovery dispute with your client(s). Therefore we feel it necessary to meet and confer with our office regarding the deficiencies noted above in the your client(s) discovery responses.

Please respond to this letter in writing once you have had an opportunity to review this letter.

Please let us know your intentions within (1) one week of the date of this letter, otherwise, we will assume that you do not wish to meet and confer regarding these responses and we will be forced to file a motion to compel further responses and ask for all appropriate sanctions against you and your client for the cost of making this motion.

Anticipating a favorable resolution to this matter, we await your responses.

Cordially,

A handwritten signature in black ink, appearing to read "George J. MacKoul", written over the typed name and firm name.

George J. MacKoul  
SABBAH & MACKOUL

GJM



# EXHIBIT D

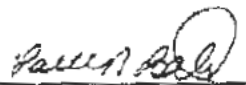
**AGREEMENT TO EXTEND TIME TO MAKE MOTION TO COMPEL**

**Re: Machado v. Ilo, et al.  
San Joaquin County Superior Court Case No. CV 018440**


We hereby agree to an open ended extensions of time to file motions to compel further answers, responses and production of document on all outstanding discovery responded to by defendants, Ilo, Diocese of Stockton and Bishop Blaire in the above matter, which are the subject of plaintiffs' meet and confer letters previously sent to defense counsel.

The extension can terminate with written notice by either party, and plaintiffs will have 30 days from the termination date to file motions against defendants.

Dated: 10-6-03

  
\_\_\_\_\_  
PAUL N. BALESTRACCI  
For Defendants, Ilo, Diocese of Stockton and  
Blaire.

Dated: 10-7-03

  
\_\_\_\_\_  
GEORGE J. MACKOUL  
For Plaintiffs

TOP

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

8 Anthony Boskovich (Bar No. 121198)  
9 LAW OFFICES OF ANTHONY BOSKOVICH  
10 28 North First Street, 6<sup>th</sup> Floor  
11 San Jose, California 95113-1210  
12 Phone: 408-286-5150  
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 \$36.30 - 200402108026

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

21 vs.

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

) Case No.: CV018440  
)  
) **PLAINTIFF'S NOTICE OF MOTION**  
) **AND MOTION TO COMPEL PROPER**  
) **RESPONSES TO REQUEST FOR**  
) **ADMISSIONS PROPOUNDED BY**  
) **PLAINTIFF RACHEL LOMAS TO THE**  
) **DIOCESE OF STOCKTON; REQUEST**  
) **FOR SANCTIONS PURSUANT TO C.C.P.**  
) **2023 AGAINST THE DIOCESE OF**  
) **STOCKTON AND/OR THEIR COUNSEL**  
) **OF RECORD, MEMORANDUM OF**  
) **POINTS AND AUTHORITIES IN**  
) **SUPPORT OF MOTION, DECLARATION**  
) **OF GEORGE J. MACKOUL IN**  
) **SUPPORT OF MOTION TO COMPEL.**

R. LOMAS  
✓  
Diocese


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

31 YOU ARE HEREBY NOTIFIED THAT at 9 a.m. on March 3, 2004 or as soon  
32 thereafter as the matter can be heard, in Department 41 of this Court, Plaintiff will move this  
33 Court for an order compelling defendant Diocese of Stockton to furnish further responses to

1 Request for Admissions, Set no. 1, propounded by plaintiff Rachael Lomas and shown on the  
2 Statement of Questions and Answers in Dispute, (Rule of Court 335) attached hereto and served  
3 and filed separately herewith; and also for an order that said defendant pay a monetary sanction  
4 to moving party in the sum of \$1,436.30 for the reasonable expenses and attorney's fees incurred  
5 by the moving party in connection with this proceeding. This motion will be made on the  
6 grounds that the defendants responses to the Request for Admission are relevant to the subject  
7 matter of this action, and do not relate to privileged matters, and that the said defendant's refusal  
8 to properly and thoroughly answer same is without substantial justification.

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

11  
12 Dated: February 9, 2004

13   
14 George J. MacKoul  
15 SABBAH AND MACKOUL  
16 Attorneys for the Plaintiffs  
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II.

WHERE RESPONSES TO REQUEST FOR ADMISSIONS HAVE BEEN TIMELY FILED BUT ARE DEEMED DEFICIENT BY THE REQUESTING PARTY (E.G., BECAUSE OF OBJECTIONS OR EVASIVE RESPONSES) THE PROPOUNDING PARTY MAY MOVE FOR AN ORDER COMPELLING FURTHER RESPONSES. CA

*CIV PRO* § 2033(L)

“Objections to the entire set of RFAs, without some attempt to admit or deny in part, cannot be considered a “good faith” response to RFAs. Such **wholesale** objections may result in imposition of sanctions against the responding party *Cembrook v. Sup.Ct.*, (1961) 56 Cal.2d 423, 428, 15 Cal.Rptr. 127, 130. It is not grounds for an objection that the request calls for an “opinion”, or that the facts are known to the propounder of the requests. *Hillman v. Stults* (1968) 263 Cal.App.2d 848, 885, 70 Cal.Rptr. 295, 317” See *Weil and Brown Civil Procedure Before Trial*, Chapter 8, Section 8:1356-1359.

The arguments set forth in the moving party’s CRC 335 statement file separately and concurrently herein, clearly shows that the defendant’s response to the request for admissions have no merit and are made to force plaintiff to disprove **false** affirmative defenses and **obstruct** the clarification of potentially uncontested facts.

Therefore further supplemental answers should be ordered by the court to be filed by the defendants, without merit less objections.

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III.

FURTHER, IT IS NOT PROPER TO OBJECT TO A REQUEST FOR ADMISSION ON  
THE GROUNDS THAT IT CALLS FOR A LEGAL CONCLUSION OR OPINION.

An RFA may properly relate to a matter that is in controversy between the parties. *Ca Civ Pro* § 2033(a). "The fact that the request is for the admission of a controversial matter . . . is of no moment." *Cembrook v. Sup.Ct.*, supra, 56 Cal.2d at 429, 15 Cal.Rptr. at 130. Thus, P's request that D admit that "D was driving in excess of the posted speed limit at time and place of accident" is proper. In fact requests may be served asking for matters, which, if admitted or deemed true (by failure to respond), would result in the **unconditional surrender** of the party on whom they are served. E.g., "Admit you have absolutely no grounds to prosecute (or defend) this case." See *Demyer v. Costa Mesa Mobile Home Estates* (1995) 36 Cal.App.4th 393, 395-396, 42 Cal.Rptr.2d 260, 261, fn. 8. Cited in *Weil and Brown, Civil Procedure Before Trial*, Chapter 8, Section 1297.

"An RFA may also require "an application of law to fact." *Ca Civ Pro* § 2033(a). "Thus, a party may be required to admit or deny who is the "owner" of property; or whether the driver of a car had the owner's "permission or consent"; or whether specified acts were "negligent"; or whether a third person was an "authorized agent" or was acting in the "course and scope of employment," etc. See *Burke v. Sup.Ct.* (1969) 71 Cal.2d 276, 280, 78 Cal.Rptr. 481, 487--whether attachment levy was "regular on its face"; and *Garcia v. Hyster Co.* (1994) 28 Cal.App.4th 724, 735, 34 Cal.Rptr.2d 283, 289--whether employer was "negligent" and whether such negligence was "legal cause" of P's injuries". Cited in *Weil and Brown, Civil Procedure Before Trial*, Chapter 8, Section 1299.

As set forth in the moving party's 335 Statement, the admissions requested were clearly relevant and authorized admissions directed at legal conclusions and opinions set forth in

1 plaintiffs' complaint. They are valid questions, which were met with invalid responses. An order  
2 by this court to the defendant is appropriate and necessary to narrow the issues before trial and  
3 further save this plaintiff from the cost of proving these issues.

4  
5 **IV.**

6 **DEFENDANT HAS A DUTY TO RESPOND FULLY TO REQUEST FOR ADMISSIONS.**

7 The code requires that a party who responds to request for admissions has a duty to  
8 provide complete and straightforward responses. Each answer "**shall** be as complete and  
9 straightforward as the information reasonably available to the responding party permits." *Ca Civ*  
10 *Pro* § 2033(f)(1) (Emphasis added)

11 Thus, absent a **valid** objection, the response **must** contain one of the following:

- 12
- 13 • An admission;
  - 14 • A denial;
  - 15 • A statement claiming inability to admit or deny. *Ca Civ Pro* § 2033(f)(1).

16 Further, The Discovery Act requires the responding party to undertake a "good faith"  
17 obligation to investigate sources reasonably available to him or her in formulating answers to  
18 RFAs (similar to the duty owed in responding to interrogatories; ). *Ca Civ Pro* § 2033(f); see  
19 *Chodos v. Sup.Ct. (Lowe)* (1963) 215 Cal.App.2d 318, 322, 30 Cal.Rptr. 303, 305.

20 As set forth in the concurrently filed (CRC 335) Statement of Questions and Answers in  
21 Dispute, it is clear that defendant has failed in each of the duties described above. Rather,  
22 objections were filed that were not valid, some not even being recognized by the laws of this  
23 State.



V.

1  
2 **THE DEFENDANT HAS NOT MET AND CONFERRED ON THE ISSUES STATED IN**  
3 **THIS MOTION, FORCING PLAINTIFF TO MAKE THIS MOTION. FAILING TO**  
4 **MEET AND CONFER IS "IN AND OF ITSELF" SANCTIONABLE REGARDLESS OF**  
5 **THE OUTCOME OF THIS AND OTHER MOTIONS.**  
6

7 C.C.P. 2023 (a) (9) states in part: "Notwithstanding the *outcome* of the particular  
8 discovery motion, the court **shall** impose a monetary sanction ordering that any party or attorney  
9 who fails to confer are required, pay the reasonable, expenses, **including attorney's fees,**  
10 incurred by anyone as a result of that conduct." (Emphasis added)

11 As set forth in the attached declaration of Attorney MacKoul, defendant should be  
12 ordered to pay sanctions for the cost and time of bringing this motion because of defendant's  
13 failure to meet and confer.  
14

15 VI.

16 **BECAUSE THE DEFENDANT FILED EVASIVE/INCOMPLETE RESPONSES AND**  
17 **OBJECTIONS, (WITHOUT SUBSTANTIAL JUSTIFICATION) DEFENDANT**  
18 **"MISUSES THE DISCOVERY PROCESS" [CA CIV PRO § 2023(A)(4)-(6)]; AND**  
19 **SANCTIONS ARE APPROPRIATE FOR THE COST OF BRINGING THIS MOTION.**  
20

21 Failure to respond to Request for Admissions, evasive responses, and objections lacking  
22 substantial justification are "misuses of the discovery process." *Ca Civ Pro* § 2023(a)(4)-(6);

23 The separate filed CRC 335 Statement, filed concurrently within explains to the court  
24 why the responses lack substantial justification for being evasive and incomplete and not  
25 containing proper objections.



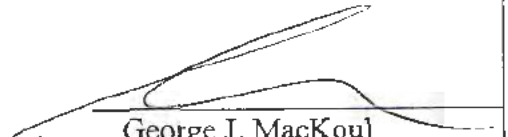
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VII.

CONCLUSION

Based on the foregoing, as well as the arguments set forth in the moving parties separately filed CRC 335 Statement the moving party respectfully requests that the court order the defendant, Diocese of Stockton to supplement their responses to Request for Admissions Set No. 1, and further to award the moving party sanctions in accordance with the attached declaration of Attorney MacKoul.

Dated: February 9, 2004



George J. MacKoul  
SABBAH AND MACKOUL  
Attorneys for the Plaintiffs

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 Request for Admission, Set Number 1, mailed by Plaintiff Rachel Lomas to Defendant Diocese of Stockton on January 4, 2003.
3. Attached, as Exhibit B is a true and correct copy of Defendants Diocese of Stockton's Responses to Request for Admissions Set 1, mailed to Plaintiff's counsel on March 13, 2003.
4. Attached, as Exhibit C is a true and correct copy of a letter dated from plaintiff's counsel to defense counsel, dated June 10, 2003, inviting defense counsel 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 10-6-03 stipulation/letter from defense counsel to plaintiff's counsel granting an open-ended extension of time to file this motion.
6. To date defense counsel has not met and conferred with regard to these responses. Accordingly plaintiff's counsel has no other option but to file this motion.
7. I am requesting the following sanctions for the time it took me to prepare and file this motion.
  - a. June 13, 2003 letter inviting defendant to meet and confer including legal research and drafting time took approximately **4 hours**.

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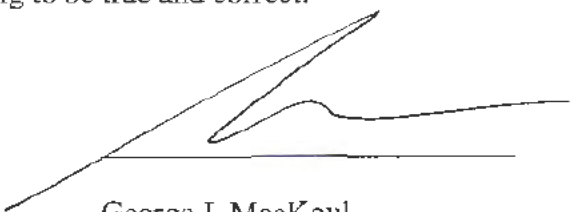
b. I spent approximately **4 hours** drafting this notice of motion and motion and separately filed CRC 335 Statement.

8. My average billable hourly rate is \$200.00 per hour as this is the rate and therefore I am asking the court to award me 8 hours of time or (8 x \$200.00 plus filing fee for this motion of \$36.30) or **\$1,436.30** be awarded to plaintiff's counsel the defendant Diocese of Stockton, for the cost of bringing this motion.

9. I also declare and state that the arguments set forth in my separately filed CRC 335 to be true and correct and I incorporate those arguments herein by reference as a part of this declaration.

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

Date: February 9, 2004



George J. MacKoul