

EXHIBIT A

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12 Attorneys for the Plaintiffs

13 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

14 Kathleen Machado as an individual and as) Case No.: CV018440
15 Guardian ad Litem for, Rachel Lomas and)
16 Amber Lomas,) REQUEST FOR ADMISSION
17 Plaintiffs,)
18 vs.)
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, Rachel Lomas**
25 Responding Party: **Defendant, Diocese of Stockton**
Set No. 1.

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

DEFINITIONS

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

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

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

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

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

22
23 **REQUEST FOR ADMISSION NO. 1:**

24 Admit that in July of 2001 YOU had no documents, which contained a policy/procedure for
25 protecting minors from sexual misconduct by priest in YOUR employ.

1 REQUEST FOR ADMISSION NO. 2:

2 Admit that on September 11, 2001, Amber Lomas reported allegations of sexual misconduct by
3 defendant Francis Arakal to defendant Fr. Joseph Illo.

4
5 REQUEST FOR ADMISSION NO.3:

6 Admit that on September 11, 2001, YOU had constructive notice of allegations of sexual
7 misconduct by Fr. Francis Joseph, a.k.a. Fr. Francis Arakal.

8
9 REQUEST FOR ADMISSION NO. 4:

10 Admit that YOU did not formally investigate the allegations/report made by Amber Lomas to Fr.
11 Joseph Illo on September 11, 2001 of sexual misconduct by Fr. Francis Arakal upon Rachel and
12 Amber Lomas until May/June of 2002.

13
14 REQUEST FOR ADMISSION NO. 5:

15 Admit that YOU investigated allegations made by Plaintiff Kathleen Machado regarding Fr. Illo,
16 before investigating the allegations made by Amber Lomas regarding the physical molestation of
17 Rachel Lomas by defendant Arakal.

18
19 REQUEST FOR ADMISSION NO. 6:

20 Admit that YOU did not formally suspend Fr. Francis Joseph, a.k.a. Fr. Francis Arakal from his
21 duties as a priest until late May, or June of 2002.

22
23 REQUEST FOR ADMISSION NO. 7:

24 Admit that YOU did not report the allegations of sexual misconduct against Fr. Francis Arakal to
25 the police until May, or June of 2002.

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. 15:

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. 15:

Same BOILERPLATE response as stated in No. 14

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. 16:

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. 16:

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. 17:

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. 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)

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. 18:

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. 18:

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. 19 :

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. 19 :

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. 20:

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. 20:

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. 21 :

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. 21:

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.

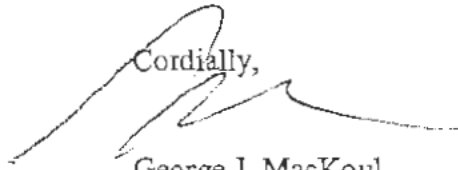
The discovery propounded and the responses requested contain important evidence necessary for the plaintiff(s) to fully and fairly evaluate their claim against your clients. Improper and unfair withholding of this information can only cause unnecessary court delays and do nothing but increase the cost 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 'G. MacKoul', with a long horizontal flourish extending to the right.

George J. MacKoul
SABBAH & MACKOUL

GJM

EXHIBIT D

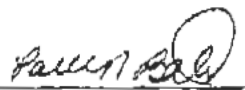
AGREEMENT TO EXTEND TIME TO MAKE MOTION TO COMPEL

**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

PROOF OF SERVICE
CCP 1013a

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 509 W. Weber Avenue, Stockton, California 95203. On March 13, 2003, I served the within documents:

RESPONSES TO REQUESTS FOR ADMISSIONS, SET NO. ONE

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

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

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

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

VIA FEDERAL EXPRESS

George Joseph MacKoul, Esq.
SABBAH and MacKOUL
49 Locust Street
Falmouth, Mass 02540
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*(Attorneys for Plaintiffs, Kathleen Machado,
Rachel Lomas, and Amber Lomas)*

Anthony Boskovich
Attorney at Law
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San Jose, CA 95113
Telephone: (408) 286-5150
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(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)*

*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

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COPY

June 10, 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 Diocese of Stockton'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,

However, the proof of service signed by your assistant Cary Nunes is dated March 13, 2003. Accordingly, your responses are beyond the statutory time period, and therefore all objections to this discovery are hereby waived. Failing to respond within the time limit waives most objections to the Request of Admission.

In addition the responses propounded by your client, Diocese of Stockton are incomplete unverified and evasive. 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 27th 2003**.

**DEFENDANT, DIOCESE OF STOCKTON'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. 10 :

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

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

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

WHY FURTHER ANSWERS SHOULD BE COMPELLED:

How is this request covered by a constitutional privilege/right of privacy? Our client mailed the Bishop a letter in January of 2002, advising him of inappropriate behavior by one of the Fr. Arakal. This is not a privilege communication? The admission is relevant to prove notice, and is discoverable. Please advise us of your position and legal authority to support the same. Otherwise and amended response is required.

REQUEST FOR ADMISSIONS NO. 11 :

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

RESPONSE TO REQUEST FOR ADMISSION NO.11:

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

WHY FURTHER ANSWERS SHOULD BE COMPELLED:

Your objections are illogical and in **direct contradiction** of current case law. It is not ground for 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. An RFA may properly relate to a matter that is in controversy between the parties. Ca Civ Pro § 2033(a) . 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] 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 "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]

Please direct me to legal authority to the contrary. The admission is simply asking if the Responding party has a policy of requiring its employees and or agents to report acts of misconduct by the same. Your objections, although waived are obstreperous, and simply designed to avoid your obligations to respond under the code as mandated by the code. The question does not ask your client if they breached a duty, but only that a duty to report exists, one created by the defendant in the documents produced to plaintiffs.

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

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 first affirmative defense stated in YOUR answer, that plaintiffs' claims are barred by the applicable statute of limitations.

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 cause for 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. 13:

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. 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 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. 13 (second):

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. 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 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. 14:

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 Illo, Defendant Ryan and Defendant Arakal.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

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

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

1 **REQUEST FOR ADMISSION NO. 8:**

2 Admit that YOU had actual notice of the allegations of misconduct by Fr. Francis Arakal with
3 regard to Plaintiffs 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
6 **REQUEST FOR ADMISSION NO. 9:**

7 Admit that Defendant Arakal has been the subject of other complaints involving minors, other
8 than the Plaintiffs Amber and Rachel Lomas.

9
10 **REQUEST FOR ADMISSION NO. 10:**

11 Admit that Defendant Arakal has never been evaluated by a psychiatrist/psychologist or other
12 mental health professional regarding the incident.

13
14 **REQUEST FOR ADMISSION NO. 11:** ✓

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

17
18 **REQUEST FOR ADMISSION NO. 12:** ✓

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

1 REQUEST FOR ADMISSION NO. 13: ✓

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

6
7 REQUEST FOR ADMISSION NO. 13: ✓

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

11
12 REQUEST FOR ADMISSION NO. 14: ✓

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

17
18 REQUEST FOR ADMISSION NO. 15: ✓

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

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

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 plaintiff Cathleen
4 Machado “voluntarily, knowingly and reasonably accepted the risk involved” in Defendant Illo
5 communicating to her eleven year old daughter Rachel Lomas that plaintiff Machado “wanted to
6 sleep with” Defendant Illo.

7
8 **REQUEST FOR ADMISSION NO. 17:**

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

13
14 **REQUEST FOR ADMISSION NO. 18:**

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 plaintiff Kathleen
17 Machado consented to the acts of Defendant Illo as so stated in the complaint by plaintiffs.

18
19
20 **REQUEST FOR ADMISSION NO. 19:**

21 Admit that YOU have no evidence to support and YOU will not be able discover evidence to
22 support YOUR EIGHTH Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel
23 and Amber Lomas “failed to act with clean hands in the matters raised in the complaint.”
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REQUEST FOR ADMISSION NO. 20:

Admit that YOU have no evidence to support and YOU will not be able 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.”

REQUEST FOR ADMISSION NO. 21:

Admit that YOU have no evidence to support and YOU will not be able 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 causes”.

REQUEST FOR ADMISSION NO. 22:

Admit that YOU have no evidence to support and YOU will not be able discover evidence to support YOUR NINTH Affirmative Defense Stated in YOUR answer, that plaintiffs Rachel and Amber Lomas alleged injuries “if any were proximately caused by intervening or supervising causes.”

REQUEST FOR ADMISSION NO. 23:

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

REQUEST FOR ADMISSION NO. 24:

1 Admit that defendant Illo was acting in his course and scope as a priest and as and
2 employee/representative for YOU on September 11, 2001, when the alleged defamatory remarks
3 were made by defendant Illo to plaintiff Amber LOMAS regarding Kathleen Machado.

4 REQUEST FOR ADMISSION NO. 25:

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

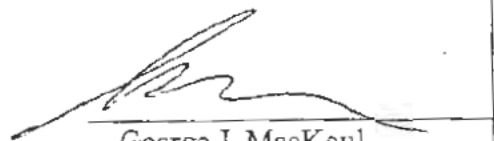
7
8 REQUEST FOR ADMISSION NO. 26:

9 Admit that defendant Illo was never suspended and or disciplined in any manner by YOU for the
10 allegations of defamatory remarks made in the complaint by plaintiff Machado.

11
12 REQUEST FOR ADMISSION NO. 27:

13 Admit that defendant Illo has never been sent to any educational seminars and or further training,
14 by YOU regarding how to avoid defaming others and/or engaging in defamatory behavior.

15
16 Dated this 3rd day of January, 2003

17
18 
19 George J. MacKoul
20 SABBAH AND MACKOUL
21 Attorneys for the Plaintiffs
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 January 06, 2003, I served the within: **REQUEST FOR ADMISSIONS SET ONE DIRECTED TO DEFENDANT DIOCESE OF STOCKTON.**

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

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

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

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

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

CO-COUNSEL FOR PLAINTIFF

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

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

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

COUNSEL FOR DEFENDANT ARAKAL

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

Executed on January 4, 2003 at Falmouth, Massachusetts.

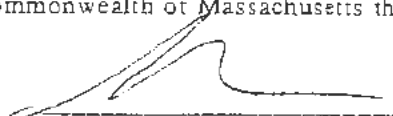

George J. MacKoul

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)
11 as Guardian Ad Litem for RACHEL LOMAS)
and AMBER LOMAS)

12 Plaintiff,

13 vs.

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

17 Defendant.
18

Case No. CV 018440

**RESPONSES TO REQUEST FOR
ADMISSIONS, SET NO. ONE**

19
20 PROPOUNDING PARTY: Plaintiff, RACHEL LOMAS

21 RESPONDING PARTY: Defendant, THE ROMAN CATHOLIC BISHOP OF
22 STOCKTON, a Corporation Sole

23 SET NO.: ONE
24

25 Defendant THE ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation Sole,
26 hereby provides the following Responses to Plaintiff KATHLEEN MACHACO'S Requests for
27

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

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

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

6 Defendant objects to this request on the grounds that it seeks a legal conclusion.
7 Defendant further objects to the characterization of a duty to this defendant, which has not claimed
8 breach of duty toward itself.

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

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. It also calls for
13 speculation with regard to the future discovery of evidence.

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

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

19 **Response to Request No. 13 (second):**

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. It also calls for
23 speculation with regard to the future discovery of evidence.

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

25 Defendant objects to this request on the grounds that it is compound, argumentative,
26 overbroad, and intended to harass. Defendant further objects to the request as improperly phrased
27

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

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

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. It also calls for
7 speculation with regard to the future discovery of evidence.

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

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

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

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. It also calls for
17 speculation with regard to the future discovery of evidence.

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

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

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

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

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

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

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. It also calls for
7 speculation with regard to the future discovery of evidence.

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

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

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

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. It also calls for
17 speculation with regard to the future discovery of evidence.

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

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

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

24 Defendant admits that Father Illo was acting in the course and scope of his activities as a
25 priest and as an agent of the Diocese on September 11, 2001 when he met with Amber Lomas.
26 Defendant denies the remaining portions of that request.

1 Response to Request No. 25:

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

4 Response to Request No. 26:

5 Defendant objects to the term "disciplined" as ambiguous. Without waiving that objection,
6 Defendant admits that Father Illo was not suspended or restricted in his duties.

7 Response to Request No. 27:

8 Admit.

9
10 Dated: March 13, 2003

NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION

11
12 By: Paul N. Balestracci
13 PAUL N. BALESTRACCI
14 Attorneys for Defendants,
15 FR. JOSEPH ILLO, MONSIGNOR RICHARD J.
16 RYAN, BISHOP STEPHEN E. BLAIRE, and
17 THE ROMAN CATHOLIC BISHOP OF
18 STOCKTON, a Corporation Sole
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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 6th Floor
11 San Jose, California 95113-1210
12 Phone: 408-286-5150
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 Kathleen Machado as an individual and as
17 Guardian ad Litem for, Rachel Lomas and
18 Amber Lomas,
19 Plaintiffs,
20 vs.
21 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr.
22 Francis Arakal, Fr. Richard Ryan, Bishop
23 Steven Blaire and The Diocese of Stockton
24 and Does 1-100,
25 Defendants

26) Case No.: CV018440
27)
28) **PLAINTIFF'S CALIFORNIA RULES OF**
29) **COURT 335 STATEMENT OF**
30) **QUESTIONS AND ANSWERS IN**
31) **DISPUTE TO SPECIAL**
32) **INTERROGATORIES, SET NO. 1,**
33) **PROPOUNDED BY PLAINTIFF RACHEL**
34) **LOMAS AND RESPONDED TO BY**
35) **DEFENDANT DIOCESE OF STOCKTON.**
36)
37)
38) **HEARING DATE: March 3, 2003**
39) **Department: 41**
40) **Time: 9:00 A.M.**

41 [Filed concurrently with Plaintiff's Motion
42 to Compel Further Answers to Special
43 Interrogatories, Set No. 1]

44 The following are certain Special Interrogatories the responses received verbatim, and
45 the reasons why further answers to the requests should be compelled:

46 **SPECIAL INTERROGATORY NO. 7:**

47 If YOUR answer to the Special Interrogatory [5] is anything other than an unconditional "Yes,"
48 then please identify all witnesses, who support YOUR answer to Special Interrogatory No. 5.

1 [Special Interrogatory No. 5 stated: Do you contend that Defendant Fr Joseph Illo was notified
2 by plaintiff Amber Lomas of the allegations of physical contact by Fr. Francis Arakal upon
3 plaintiff Rachel Lomas on or about September 11, 2001 and as so stated in the complaint by
4 Plaintiffs? Response: No.]

5 **Response to Special Interrogatory No. 7:**

6 There are no witnesses to prove a negative.

7 **Reasons Why Further Answers Should be Compelled:**

8 Special Interrogatory number 7 seeks to discover weather or not there are any other witnesses to
9 the alleged reporting of sexual molestation to Fr. Illo on September 11, 2001, other than Fr. Illo.
10 The interrogatory seeks to identify witness who can testify to what was actually reported to Fr.
11 Illo or other members of the parish staff. Defendant Arakal admitted in verified interrogatory
12 responses that the Diocese had taken statements of witnesses to the September 11, 2001 incident.
13 We are entitled to the identity of the witnesses who will support your response to special
14 interrogatory No. 5, which contends that Amber Lomas reported no physical contact to Fr. Illo.
15 The interrogatory clearly seeks proof to support the allegations plead in plaintiffs complaint and
16 is discoverable. No legal objections were filed and no objections to the form of the question were
17 filed. Therefore all objections are waived and defendant has no substantial justification for not
18 responding appropriately.

19 **Special Interrogatory No. 8:**

20 If YOUR answer to the Special Interrogatory (no. 5) is anything other than an unconditional
21 "Yes", please identify all DOCUMENTS, which support YOUR answer to Special Interrogatory
22 No. 5.

23 **Response to Special Interrogatory No. 8:**

24 There are no documents to prove a negative.

25 **Reasons Why Further Answers Should be Compelled:**

Special Interrogatory number 8 seeks to discover weather or not there are any documents, i.e.
reports, memos, etc., to support Defendants answer to Special Interrogatory No. 5, that no reports
of sexual misconduct were reported to Fr. Illo on September 11, 2001. The answer is evasive and
avoids identification or denial of such documents that plaintiffs are entitled to Discover.
Defendant Arakal, has indicated in his discovery responses that the Diocese of Stockton has
forwarded statements made by witnesses to the September 11 conversations between Defendant
Illo and Amber Lomas.

SPECIAL INTERROGATORY NO. 9:

Please identify each and every Cannon Law YOU have knowledge of which applies to YOUR
priests maintaining the confidential communication made to the priest(s) by any members of
YOUR diocese.

1 **Response to Special Interrogatory No. 9:**

2 Defendant objects to this interrogatory on the grounds that it seeks an opinion as to canon law,
3 which is not within the jurisdiction of this court. Further, to the extent this question seeks to
4 adjudicate anything regarding a confidential communication between a member of our
5 community and a priest, that is strictly an ecclesiastical matter and is not within the jurisdiction
6 of this court and discovery of such is improper, as it seeks information protected by the religious
7 freedom clauses of the United States and California Constitutions.

8 **Reasons Why Further Answers Should be Compelled:**

9 Special Interrogatory number 9 seeks to discover the *identity* of, not the opinion or legal
10 application of which policies and procedures govern the flow of communication between clergy
11 and their parishioners. By way of analogy, there is no privilege to asking a party to identify
12 which rule of professional conduct mandates attorneys to keep the confidences of their clients.
13 Since no objection to relevancy has been made and it is hereby waived, plaintiff believe they
14 have a valid right to discovery the identity of such rules.

15 **SPECIAL INTERROGATORY NO. 15:**

16 Do YOU have the authority to hire, fire, suspend and or terminate any of the other named
17 defendants in their capacity as priests and bishop acting on YOUR behalf.

18 **Response to Special Interrogatory No. 15:**

19 Defendant objects to this interrogatory on the grounds that it inquires into the assignment of
20 priests, which is an ecclesiastical matter protected from discovery. Without waiving that
21 objection, the authorities to remove a priest and alter his duties are given to the Bishop subject to
22 requirements of canon law.

23 **Reason Why Further Answers Should Be Compelled:**

24 The propounding party is confused by the objection. The Diocese asserts that some of the
25 defendants are independent contractors. It is not fair for the Defendant to assert the legal theory
of independent contractor in order to distance the Diocese from responsibility for the improper
acts of its priests, but claim that the First Amendment protects inquiry into the employment
structure. There is no substantial justification for objections stated.

26 **SPECIAL INTERROGATORY NO. 16:**

27 If your answer to the previous interrogatory is anything other than an unconditional YES, please
28 explain in detail.

29 **Response to Special Interrogatory No. 16:**

30 Please see the response to the previous interrogatory.

31 **Reason Why Further Answers Should Be Compelled:**

32 Again, the Diocese asserts that some of the defendants are independent contractors. It is not fair
33 for the Defendant to assert the legal theory of independent contractor in order to distance the

1 Diocese from responsibility for the improper acts of its priests, but claim that the First
2 Amendment protects inquiry into the employment structure. There is no substantial justification
3 for objections stated.

4 Further the law requires that the responding party must separately answer each interrogatory
5 C.C.P. 2030 (f).

6 Dated: February 6, 2004

7 Respectfully submitted

8 _____
9 George J. MacKoul
10 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 6, 2004 I served the within: **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL PROPER RESPONSES TO SPECIAL INTERROGATORIES FROM DEFENDANT DIOCESE OF STOCKTON; REQUEST FOR SANCTIONS PURSUANT TO C.C.P. 2023 AGAINST THE RESPONDING PARTY AND/OR THEIR COUNSEL OF RECORD, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION, DECLARATION OF GEORGE J. MACKOUL IN SUPPORT OF THE MOTION TO COMPEL AND 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.

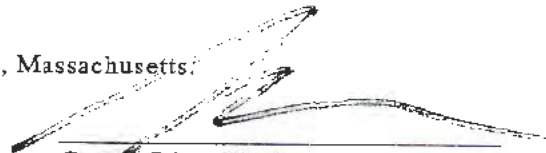
Paul N. Balestracci
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Neumiller & Beardslee
509 West Weber Avenue
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Stockton, California 95203
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209-948-4910

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 Bnskovich
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 6, 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 6th Floor
11 San Jose, California 95113-1210
12 Phone: 408-286-5150
13 Fax: 408-286-5170
14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

20 vs.

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

) Case No.: CV018440

)
) **PLAINTIFFS CALIFORNIA RULES OF**
) **COURT 335 STATEMENT OF**
) **QUESTIONS AND ANSWERS IN**
) **DISPUTE TO FORM**
) **INTERROGATORIES, 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 Form**
) **Interrogatories, Set No. 1]**

26 The following are certain form interrogatories the responses received verbatim, and the
27 reasons why (further) answers to the requests should be compelled:

28 **Form Interrogatory 4.2**

29 At the time of the accident, was there in effect any policy of insurance through which you were
30 or might be insured any manner (for example, primary, pro-rata, or excess liability coverage or

PR
D
MARCH 3 2003
BY Pamela Edwards
DEPUTY

1 medical expense coverage) for the damages, claims, or actions that have arisen out of the
2 accident? If so, for each policy state:

3 (a) The kind of coverage;

4 (b.) The name and address of the insurance company;

5 (c) The name, address, and telephone number of each named insured;

6 (d) The policy number;

7 (e) The limits of coverage for each type of coverage contained in the policy

8 (f) Whether any reservation of rights or controversy or coverage dispute exists between
9 you and any insurance company;

10 (g) the name, address and telephone number of the custodian of the policy.

11 **Response to Form Interrogatory No. 4.1:**

12 Yes. Policy is contained in the responses to request for production of documents.

13 **Reason Why Further Answers Should Be Compelled:**

14 It is not proper to answer by directing the propounding party to documents. " If the
15 question requires reference to some other document, it should be identified and its contents
16 **summarized so that the answer by itself is fully responsive** to the interrogatory. *Deyo v.*
Kilbourne 84 Cal.App.3d at 783-784, 149 Cal.Rptr. at 510.

17 Further, all of the interrogatory subparts are not fully answered. A party may obtain
18 discovery of the existence and contents of a defendant's liability insurance coverage. This
19 includes the identity of the carrier and the nature and limits of the coverage. *Ca Civ Pro* §
20 2017(b)

21 **Form interrogatory No. 12.1**

22 State the name, address and telephone number of each individual:

23 (a) who witnessed the incident or the events occurring immediately before after the
24 incident;

25 (b) who made any statements at the scene of the incident;

(c) who heard any statements made about the incident by any individual at the scene;

(d) who you or anyone acting on your behalf claim has knowledge of the incident;

1 **Response to Form Interrogatory No. 12.1:**

2 The term "incident" is ambiguous, but based upon allegations in Plaintiff's complaint, the
3 witnesses appear to be Father Joseph Illo, Father Francis Arakal, Amber Lomas, Rachel Lomas,
4 Kathleen Machado, Mary Mullins, Owen Kummerle, Jackie Tucker, Rosario Hernandez, Yvonne
5 McGloughlin, Rose Wyeth, and Kathleen Machado.

6 **Reason Why Further Answers Should Be Compelled:**

7 These are judicial counsel approved form interrogatories; no case law or other authority
8 has held that this particular question is "ambiguous". The complaint is detailed and sets forth
9 each and every allegation against the responding party clearly and distinctly. No Demurrer was
10 ever filed by the responding parties alleging that the allegations in the complaint were
11 improperly plead and or confusing. The complaint essentially describes three major transactions.
12 The first is the molestation of the minor children at the minor's home by Fr. Arakal. The second
13 is the report of the molestation to Fr. Illo and subsequent cover up. The third transaction is the
14 defamation against the minors' mother (Ms. Machado) by defendant's Arakal and Illo. Each of
15 the three transactions may have different witness pools. The responding party has a duty to
16 answer each subpart question completely and separately. Plaintiff's have a right to know which
17 witnesses witnessed each event stated in the complaint, heard statements at each event and made
18 statements at the each event. In addition, plaintiffs have the right to know the identity of every
19 individual acting on the responding parties behalf that has knowledge of the incident. This
20 includes all canonical investigators and internal investigators. Because the defendants raised no
21 attorney client privilege or work product objections, they are now waived. There is no substantial
22 justification for defendant not giving complete, verified response to each subpart (a)-(d) of this
23 interrogatory.

24 **Form Interrogatory No. 12. 2:**

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

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

Response to Form Interrogatory No. 12.2:

Defendant objects to this interrogatory on the grounds that it seeks information protected by both
the attorney-client privilege and attorney work product privilege, as well as to reveal trial
strategy involving witnesses, which is not discoverable.

Reason Why Further Answers Should Be Compelled:

Fr. Harmon Skillen, the canon lawyer for the diocese, interviewed plaintiff Machado with
regard to some of the allegations stated in the complaint. That interview took place on July 6,
2002. Plaintiff's counsel was, in fact, present for this interview and produced his client for

1 interview voluntarily. In addition, a subsequent interview of plaintiffs Amber and Rachael
2 Lomas was taken by Sister Barbara, Defendant, Fr. Ryan on July 13, 2002. No legal counsel for
3 the diocese was involved in either of these interviews. Therefore the objections are without merit
4 as neither of these interviews were conducted by an attorney or agent of an attorney.

5 The law is clear: not all interviews conducted by the defendant are protected by the
6 attorney client/work product privileges. For instance, a list of persons who have turned over to
7 counsel statements written or recorded **independently** by them does not derive work product
8 protection. Such a list has no tendency to reveal counsel's evaluation of the case. *Nacht & Lewis*
9 *Architects, Inc. v. Sup.Ct.* (McCormick), (1996), 47 Cal.App.4th at 217-218, 54 Cal.Rptr.2d at
10 577.

11 Statements independently prepared by witnesses are not "work product" because they do
12 not reflect counsel's evaluation or impressions of the case. Such statements cannot be protected
13 from discovery by turning them over to counsel. *Nacht & Lewis Architects, Inc. v. Sup.Ct.*
14 (McCormick) (1996) 47 Cal.App.4th 214, 219, 54 Cal.Rptr.2d 575, 577, fn. 2.

15 Likewise, statements made (verbally, in writing or in recordings) by a witness to
16 interviewing counsel are usually "evidentiary" (nonderivative) in nature, and hence discoverable.
17 See *Kadelbach v. Amaral* (1973) 31 Cal.App.3d 814, 823, 107 Cal.Rptr. 720, 725.

18 **Form Interrogatory No. 12.3:**

19 Have you or anyone acting on your behalf obtained a written record statements from any
20 individual concerning incident? If so, for each statements state:

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

25 the name, address and telephone number of each person who has the original statement or a
copy.

Response to Form Interrogatory No. 12.3:

Defendant objects to this interrogatory on the grounds that it seeks information protected by both
the attorney-client privilege and attorney work product privilege, as well as to reveal trial
strategy involving witnesses, which is not discoverable.

Reason Why Further Answers Should Be Compelled:

The arguments stated in 12.2 are applicable here and are incorporated by reference.

Form Interrogatory No. 12. 6:

Was a report made by any person concerning incident? If so, state:

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

4 **Response to Form Interrogatory No. 12.6:**

5 Defendant objects to this interrogatory on the grounds that it seeks information protected by both
6 the attorney-client privilege and attorney work product privilege, as well as to reveal trial
7 strategy involving witnesses, which is not discoverable.

8 **Reason Why Further Answers Should Be Compelled:**

9 The arguments stated in 12.2 are applicable here and are incorporated by reference.

10 **Form Interrogatory No. 15.1:**

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

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

19 **Response to Form Interrogatory No. 15.1:**

20 Defendant objects to this interrogatory on the grounds that it requests information protected by
21 the attorney-client privilege and attorney work product privilege. Defendant further objects to
22 this interrogatory as it purports to obtain what amounts to a verified response to an unverified
23 complaint. Defendant further objects in that the term "material allegations" is not defined and
24 the complaint was not responded to on a point by point basis.

25 **Reasons Why Further Answers Should Be Compelled:**

This interrogatory is asking the responding party to **substantiate** each affirmative
defense stated in their answer to the complaint. Plaintiff is not asking defendant to verify their
answer. However, plaintiff is entitled to know what **facts and evidence** the responding party has
to support, in some cases, illogical defenses. Just as plaintiffs may be sanctioned for filing
frivolous causes of action in a complaint, defendants may be sanctioned for asserting
nonmeritorious cross-complaints or denials and defenses in their answers--e.g., answers
containing dozens of affirmative defenses (waiver, estoppel, laches, unclean hands, etc.) for
which there is **no evidentiary support**, please see or Ca Civ Pro § 128.7 (b) (1-3) requiring a
party to not present an unmeritorious defense which will increase the cost of litigation. As so
stated in *C.C.P.* 128.7 (b) by **presenting an answer to the court** the attorney is certifying that
"to the best of the persons knowledge, information, and belief, formed **after an inquiry**
reasonable under the circumstances". . .that it is not being presented for an improper purpose

1 to harass or cause unnecessary delays and that the affirmative defenses have facts to support said
2 defense.

3 Clearly there is no justification for the objections to this interrogatory or the failure to
4 properly respond to the interrogatory. The court should order the defendant to respond fully to
5 this interrogatory.

6 **Form Interrogatory 17.1:**

7 Is your response to each request for admission served with these interrogatories and unqualified
8 admission? If not, for each response that is not an unqualified admission:

- 9 (a) state the number of the request;
10 (b) state all facts upon which you base your response;
11 (c) state the names, addresses and telephonic numbers of all persons who have knowledge
12 of those facts;
13 (d) identify all documents and other tangible things that support your response and state
14 the name, address and telephone number of the person who has each document or
15 thing.

16 **Response to 17.1 (d):**

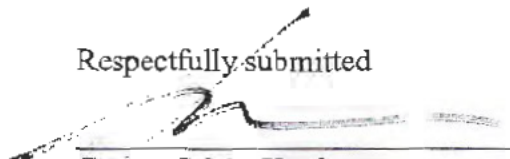
17 No responses were given.

18 **Reason Why Further Responses Should Be Compelled:**

19 These are judicially approved form interrogatories. You have a duty to provide complete
20 answers. The documents which support the facts stated in response to 17.1 (b), must be produced
21 as all objections are hereby waived.

22 Dated: February 6, 2004

23 Respectfully submitted



24 George J. MacKoul
25 Attorney for Plaintiffs

PROOF OF SERVICE

**COMMONWEALTH OF
MASSACHUSETTS
BARNSTABLE COUNTY**

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

On February 6, 2004 I served the within: **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL PROPER RESPONSES TO FORM INTERROGATORIES FROM DEFENDANT DIOCESE OF STOCKTON; REQUEST FOR SANCTIONS PURSUANT TO C.C.P. 2023 AGAINST DIOCESE OF STOCKTON AND/OR DEFENDANT'S COUNSEL OF RECORD; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION, DECLARATION OF GEORGE J. MACKOUL IN SUPPORT OF MOTION TO COMPEL AND 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.

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
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(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 6, 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
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10 28 North First Street 6th Floor
11 San Jose, California 95113-1210
12 Phone: 408-286-5150
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

20 vs.)

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

Case No.: CV018440

**PLAINTIFF'S CALIFORNIA RULES OF
COURT 335 STATEMENT OF
QUESTIONS AND ANSWERS IN
DISPUTE TO SPECIAL
INTERROGATORIES, SET NO. 1,
PROPOUNDED BY PLAINTIFF RACHEL
LOMAS AND RESPONDED TO BY
DEFENDANT FR. JOSEPH ILLO.**

HEARING DATE: March 3, 2003

Department: 41

Time: 9:00 A.M.

**[Filed concurrently with Plaintiffs' Motion
to Compel Further Answers to Special
Interrogatories, Set No. I]**

26 The following are certain Special interrogatories the responses received verbatim, and the
27 reasons why (further) answers to the requests should be compelled:

1 **SPECIAL INTERROGATORY NO. 4:**

2 Please identify the name address and telephone number of each and every member of your staff
3 at St. Joseph's Church in September of 2001.

4 **Response to Special Interrogatory No. 4:**

5 Defendant objects to this interrogatory on the grounds that it seeks information, which is neither
6 relevant nor calculated to lead to the discovery of admissible evidence. It further violates the
7 rights of privacy guaranteed by the California Constitution. It is further overbroad, burdensome,
8 and intended to harass.

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

10 The information is clearly relevant to ascertain the identity of potential witnesses to the report of
11 molestation/sexual abuse by Amber Lomas to Fr. Joseph Illo, on September 11, 2001. Our client
12 informed us of the presence of several parish staff members who were privy to conversations
13 between Amber Lomas and Fr. Illo. The law is crystal clear when it comes to the discoverability
14 of the identity of witnesses. "Discovery may be obtained of the identity and location of persons
15 having knowledge of **any** discoverable matter . . ." *Ca Civ Pro* § 2017(a) (Emphasis added).
16 There is no substantial justification for the objections made by the defendant. Further the
17 objections are boilerplate. "Objections must be specific. A motion to compel lies where
18 objections are "too general." *Ca Civ Pro* § 2030(1); see *Korea Data Systems Co. Ltd. v. Sup.Ct.*
19 (*Aamazing Technologies Corp.*) (1997) 51 Cal.App.4th 1513, 1516, 59 Cal.Rptr.2d 925, 926--
20 objecting party subject to sanctions for "boilerplate" objections. A false or evasive response to
21 discovery is ground for sanctions. *Ca Civ Pro* § 2023(a)(6) " *Weil and Brown, Civil Procedure*
22 *Before Trial*, Chapter 8 Section 8:1071.

23 **SPECIAL INTERROGATORY NO. 6:**

24 Please identify the name, address and telephone number of each and every witness who had
25 contact with plaintiff Amber Lomas on about September 11, 2001 when she communicated to
YOU her concerns/complaints about defendant Arakal.

Response to Special Interrogatory No. 6:

Defendant objects to the characterization of complaints or concerns. The persons of whom I am
aware having contact with Amber Lomas on September 11, 2001 are myself, Father Francis
Joseph, Mary Mullins, Owen Kummerle, Jackie Tucker, Rosario Hernandez, Yvonne
McGloughlin, Rose Wyeth, and Kathleen Machado.

REASONS WHY FURTHER ANSWERS SHOULD BE COMPELLED:

The response is incomplete, as it does not list the address and telephone number of each of the
witnesses stated. Each answer in the response must be "as **complete** and straightforward as the
information reasonably available to the responding party permits. If an interrogatory cannot be
answered completely, it shall be answered to the extent possible." *Ca Civ Pro* § 2030(f)(1)
(Emphasis added).

1 **SPECIAL INTERROGATORY NO. 7:**

2 Please identify each and every document exchanged between YOU and any of the other named
3 defendants regarding the INCIDENT.

4 **Response to Special Interrogatory No. 7:**

5 Defendant objects to this interrogatory on the grounds that it seeks information protected by the
6 attorney-client privilege, attorney work product doctrine and the joint defense privilege.

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

8 There is no joint defense privilege between defense counsels in this matter. Defense counsels
9 admitted this to. There is no "joint defense privilege" as such in California" See, *Raytheon Co. v.*
10 *Sup. Ct. (Renault)* (1989) 208 Cal.App.3d 683, 687, 256 Cal.Rptr. 425, 428; Further, as has been
11 so argued in other motions before this court, witness statements obtained by the lawyers for the
12 Diocese of Stockton, were given to counsel for co-defendant Arakal. Therefore the attorney
13 client privilege asserted here is waived, *Evidence Code Section 912*. In fact, plaintiff's would
14 argue that any communications between counsel for the Diocese and counsel for Arakal, is
15 discoverable and should be identified and produced to plaintiffs.

16 **SPECIAL INTERROGATORY NO. 10:**

17 Please identify all documents YOU received, from the defendant Diocese of Stockton, since
18 YOUR ordination as a priest, regarding and/or referring to the prevention and/or protection of
19 minors from sexual misconduct by Catholic Priests.

20 **Response to Special Interrogatory No. 10:**

21 Defendant objects to this interrogatory on the grounds that it calls for a compilation and is
22 burdensome. All such documents in my possession will be provided with my document response
23 served concurrently herewith.

24 **REASONS WHY FURTHER ANSWERS SHOULD BE COMPELLED:**

25 First, as a matter of law, It is not proper to answer by directing the propounding party to
other documents. " If the question requires reference to some other document, it should be
identified and its contents **summarized so that the answer by itself is fully responsive** to the
interrogatory. *Deyo v. Kilbourne*, supra, 84 Cal.App.3d at 783-784, 149 Cal.Rptr. at 510.

Second, Defendant Illo produced **no** documents regarding or referring to the prevention
and/or protection of minors from sexual misconduct by Catholic Priests in his production of
documents response. The response must be amended to confirm (i.e. there are no documents in
my possession) this truth otherwise the response is inaccurate.

SPECIAL INTERROGATORY NO. 12:

Please identify each member of YOUR staff, by name address and telephone number, who
currently work for YOU at St. Josephs Church in Modesto.

1 **Response to Special Interrogatory No. 12:**

2 Defendant objects to this interrogatory on the grounds that it seeks information which is neither
3 relevant nor calculated to lead to the discovery of admissible evidence. It further violates the
4 rights of privacy guaranteed by the California Constitution. It is further overbroad, burdensome,
5 and intended to harass.

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

7 The request is clearly relevant to ascertain whether or not any of the employee/witnesses in the
8 year 2001 are now "former-employees" witnesses who can be contacted by plaintiffs'
9 investigator. Further the objection, is boilerplate and sanctionable.

10 **SPECIAL INTERROGATORY NO. 14:**

11 Please identify each and every Canon Law YOU have knowledge of which applies to
12 maintaining the confidential communication made to YOU by members of YOUR church.

13 **Response to Special Interrogatory No. 14:**

14 Defendant objects to this interrogatory on the grounds that it is ambiguous and overbroad. It
15 further seeks an opinion as to applicable canon law, which is not within the jurisdiction of this
16 court and as such seeks information neither relevant nor calculated to lead to the discovery of
17 admissible evidence. It further seeks information protected by the freedom of religion clauses of
18 the United States and California Constitutions.

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

20 The request is relevant and not ambiguous. Critical to the issue regarding the reporting of
21 the sexual abuse to Fr. Illo on September 11, 2001 is the context in which the report was made.
22 Plaintiffs believe that Illo violated canon law and civil law (priest-penitent privilege) by
23 disseminating the report to third parties, by not reporting the abuse to criminal authorities or to
24 the Diocese and by further causing a confrontation between the victim and the abuser, Fr. Arakal.
25 It is clearly relevant to prove that employees of the church violated their own internal policies
and procedures with regard to the handling of the report of abuse by Amber Lomas. Further,
courts cannot recognize what the defense argues is a "conical privilege" because no such
privilege is recognized by the legislature of this State. "The privileges contained in the Evidence
Code are exclusive and courts cannot create new ones". See Ca Evid § 911; Valley Bank of
Nevada v. Sup.Ct. (Barkett) (1975) 15 Cal.3d 652, 656, 125 Cal.Rptr. 553, 555 also see *Weil and
Brown, Civil Procedure Before Trial*, Chapter 8, Section 8:110 (a).

SPECIAL INTERROGATORY NO. 19:

Any and all DOCUMENTS which refer to or relate to or contain information regarding the
policies and procedures for sexual abuse/sexual interaction between priest and minors
given/distributed/and/or authored by the defendant Diocese of Stockton and given to YOU in the
last 10 years.

Response to Special Interrogatory No. 19:

Defendant objects to this interrogatory on the grounds that it calls for a compilation and is
burdensome. All such documents in my possession will be provided with my document response
served concurrently herewith.

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

2 As a matter of law, It is not proper to answer by directing the propounding party to
3 documents. " If the question requires reference to some other document, it should be identified
4 and its contents **summarized so that the answer by itself is fully responsive** to the
5 interrogatory. *Deyo v. Kilbourne*, supra, 84 Cal.App.3d at 783-784, 149 Cal.Rptr. at 510. Further,
6 defendant Illo produced **no** documents regarding or referring to the prevention and/or protection
7 of minors from sexual misconduct by Catholic Priests in his production of documents response.
8 The response must be amended to confirm this truth otherwise the response is inaccurate.

9 Dated: February 6, 2004

10 Respectfully submitted

11 _____
12 *George J. MacKoul
13 Attorney for Plaintiffs
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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 6, 2004 I served the within: **PLAINTIFF'S NOTICE OF MOTION AND MOTION TO COMPEL PROPER RESPONSES TO SPECIAL INTERROGATORIES FROM DEFENDANT FR. JOSEPH ILLO; REQUEST FOR SANCTIONS AGAINST DEFENDANT AND/OR THEIR COUNSEL PURSUANT TO C.C.P. 2023, MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION, DECLARATION OF GEORGE J. MACKOUL IN SUPPORT OF MOTION TO COMPEL, AND 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
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509 West Weber Avenue
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(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 6, 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
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8 Anthony Boskovich (Bar No. 121198)
9 LAW OFFICES OF ANTHONY BOSKOVICH
10 28 North First Street 6th Floor
11 San Jose, California 95113-1210
12 Phone: 408-286-5150
13 Fax: 408-286-5170
14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

20 vs.)

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

Case No.: CV018440

**PLAINTIFF'S CALIFORNIA RULES OF
COURT 335 STATEMENT OF
QUESTIONS AND ANSWERS IN
DISPUTE TO REQUEST FOR
PRODUCTION SET NO. 1.**

**HEARING DATE: March 3, 2003
Department: 41**

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

RE: Request For Production By: Plaintiff Rachel Lomas To: Defendant Diocese of Stockton Set No. 1. The following are certain requests to produce documents verbatim, the responses received verbatim, and the reasons why (further) answers to the requests should be compelled:

REQUEST FOR PRODUCTION NO. 1

All documents referring to or relating to any reports of sexual misconduct with regard to minors by YOU directed to YOU involving minors, Ten years prior to July 1, 2001.

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

2 Defendant objects to this request on the grounds that it seeks information neither relevant nor
3 calculated to lead to the discovery of admissible evidence. It further violates the right to privacy
4 of those involved as provided by the California Constitution. Defendant further objects on the
5 grounds that it is overbroad, burdensome, and intended to harass.

6 **Reason Why Further Responses Should be Compelled:**

7 The objections are boilerplate in their application as they are constantly repeated throughout
8 defendant's responses. Boilerplate objections have been held to be sanctionable. See: *Korea*
9 *Data Systems Co. Ltd. v. Sup. Ct. (Amazing Technologies Corp.)* (1997) 51 Cal.App.4th 1513,
10 1516, 59 Cal.Rptr.2d 925, 926. This information is relevant to whether or not the Diocese had
11 any prior notice of any sexual misconduct on the part of the Defendant Arakal. It is relevant to
12 prove notice and negligence on the part of the Diocese. There is no case law stated to support the
13 privacy objection, and plaintiff would be amenable to an in camera inspection of the documents
14 by the court. The request is not "overbroad" and/or "Burdensome" and this is a boilerplate
15 objection. The propounding party is only attempting to gather evidence to prove their case with
16 regard to respondent superior liability as defendant Arakal was acting in the course and scope of
17 his employment as so alleged in the complaint as the sexual attacks took place in the minors
18 home after the defendant priest gained access to the home to perform a house blessing. The
19 "harassment" objection is without justification. Further there is case law in California, which
20 holds that the Diocese as a Corporation does not have a right to privacy. See, *Roberts v. Gulf Oil*
21 *Corp.* (1983) 147 Cal.App.3d 770, 793, 195 Cal.Rptr. 393, 408. The objections are without
22 substantial justification.

23 **REQUEST FOR PRODUCTION NO. 4**

24 All documents, including but not limited to the personal file, in YOUR possession, custody and
25 control regarding or relating to the employment/appointment of defendant Fr. Joseph Illo in his
capacity as a priest for the Diocese of Stockton.

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

19 Defendant objects to this request on the grounds that it is overbroad, burdensome, and intended
20 harass. It further seeks information, which is neither relevant nor calculated to lead to the
21 discovery of admissible evidence. It further seeks information protected by the right of privacy
22 guaranteed by the California Constitution. It further seeks information, which is protected by the
23 religious freedom clauses of the United States and California Constitutions.

24 **Reasons Why Further Responses Should Be Compelled:**

25 The objection is boilerplate, without supporting legal authority and intended to deny and obstruct
plaintiff's right to discovery. The information is not overbroad as the propounding party seeks to
limit this production to the personal file of Defendant Illo only. Fr. Illo has been sued previously
for defamation and therefore his prior defamatory acts go to the issue of pattern and practice on
the part of Fr. Illo in his capacity as a priest. Counsel for the plaintiff, personally sued Fr. Illo in
this court for defamation against the music director at St. Josephs Parish in Modesto two years
ago. In that lawsuit (which the Diocese settle for a considerable sum of money) Fr. Illo contacted

1 the parents of the music director and informed the parents that the music director was "gay". Fr.
2 Illo was also alleged to told staff member at the parish that the music director was committing
3 homosexual acts in his office. All of these statements were intended to defame the music director
4 and were false. These prior acts, and others are either documented or undocumented in Fr. Illo's
5 personal file and are clearly relevant to show that the Diocese of Stockton had notice of Fr. Illo's
6 defamatory behavior towards plaintiffs and others and further ratified this behavior by not
7 disciplining or rehabilitating Fr. Illo. It is clearly relevant to prove respondent superior liability.
8 The privacy protection is a limited protection, which can be overcome in this matter. Third party
9 personnel records are protected from discovery "unless the litigant can show a compelling need
10 for the particular documents and that the information cannot reasonably be obtained through
11 depositions or from nonconfidential sources." *Harding Lawson Associates v. Sup.Ct.* (Bailey)
12 (1992) 10 Cal.App.4th 7, 10, 12 Cal.Rptr.2d 538, 539 (emphasis added). Plaintiff's anticipate
13 that defendants will limit the testimony of the Diocese regarding prior notice of defamatory acts
14 by Fr. Illo, without justification and there are no other non confidential resources to gather this
15 information. Therefore there is a compelling need for the production of Fr. Illo's personal file.

10 **REQUEST FOR PRODUCTION NO. 6**

11 All documents held by YOU regarding or relating to any complaints of misconduct made to
12 YOU regarding or relating to defendant Fr. Joseph Illo's for the past 10 years.

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

13 Defendant objects to this request on the grounds that it is overbroad, burdensome, and intended
14 harass. It further seeks information, which is neither relevant nor calculated to lead to the
15 discovery of admissible evidence. It further seeks information protected by the right of privacy
16 guaranteed by the California Constitution. It further seeks information, which is protected by the
17 religious freedom clauses of the United States and California Constitutions.

16 **Reason Why Further Answers Should Be Compelled:**

17 The objections are boilerplate in their application as they are constantly repeated throughout
18 defendant's responses. Boilerplate objections have been held to be sanctionable. See: *Korea*
19 *Data Systems Co. Ltd. v. Sup.Ct. (Amazing Technologies Corp.)* (1997) 51 Cal.App.4th 1513,
20 1516, 59 Cal.Rptr.2d 925, 926. The request is certainly not overbroad, and is not burdensome.
21 The request seeks to obtain information to prove notice on the part of the Diocese of Stockton
22 with regard to prior illegal acts by one of its priests. The religious freedom objection is without
23 legal authority as the defendant cites no legal authority to support this objection in the response.
24 The Privacy objection can be overcome as the propounding party has a compelling interest in
25 obtaining the documents requested and there are no other means by which the information sought
to be produced can be obtained.

23 **REQUEST FOR PRODUCTION NO. 7**

24 All documents in YOUR possession, custody and control, evidencing communications between
25 YOU and any of the other named defendants, regarding the INCIDENT.

provide per P.B.

Response to Request No. 7:

Defendant objects to this request on the grounds that it seeks information protected by the attorney-client privilege, attorney work product doctrine, and joint defense privilege. Defendant further objects on the grounds that certain documents are part of a canonical investigation, which is an ecclesiastical process and protected from discovery.

Reasons Why Further Responses Should Be Compelled:

The objections must contain a privilege log identifying each and every document, which defendant seeks to protect under the rubric of the Attorney client privileged. The responding party cannot simply make a blanket objection to this request. In order to make a record of documents withheld and the privilege claim asserted as to each, the court may require the party claiming privilege to prepare a "privilege log". *Wellpoint Health Networks, Inc. v. Sup.Ct. (McCombs)* (1997) 59 Cal.App.4th 110, 130, 68 Cal.Rptr.2d 844, 857, The propounding party requested that a privilege log be provided as to each and every document you claimed to fall under the attorney client privilege. No such document has ever been provided to plaintiff. "The information in the privilege log must be sufficiently specific to allow a determination of whether each withheld document is or is not (in) fact privileged." *Wellpoint Health Networks, Inc. v. Sup.Ct. (McCombs)*, supra, 59 Cal.App.4th at 130, 68 Cal.Rptr.2d at 857. Further any canonical investigation done by the Diocese cannot be later converted into work product. An attorney cannot later "by retroactive adoption convert the independent work of another, already performed, into his own." *Jasper Construction, Inc. v. Foothill Junior College Dist.* (1979) 91 Cal.App.3d 1, 16, 153 Cal.Rptr. 767, 776. Further the work product doctrine is a limited privilege entitled to only qualified protection . . . meaning the court may order disclosure if the court determines that "denial of discovery will unfairly prejudice the party seeking discovery in preparing that party's claims or defenses or will result in an injustice." Ca Civ Pro § 2018(b). Further there is no privilege of a "canonical investigation." The privileges contained in the Evidence Code are *exclusive and courts cannot create new ones*. See Ca Evid § 911; *Valley Bank of Nevada v. Sup.Ct. (Barkett)* (1975) 15 Cal.3d 652, 656, 125 Cal.Rptr. 553, 555 (Emphasis added). Finally, defense counsel for Defendant Arakal, and the Diocese have admitted in open court that no joint defense privilege exists. Therefore the assertion of this defense is patently false. There is no "joint defense privilege" as such in California" See, *Raytheon Co. v. Sup.Ct. (Renault)* (1989) 208 Cal.App.3d 683, 687, 256 Cal.Rptr. 425, 428. The objections have no justification, much less a substantial justification and the defendant should be ordered to produce the documents requested.

REQUEST FOR PRODUCTION NO. 8:

All documents in YOUR possession, custody and control, evidencing communications between YOU and any of the Plaintiffs to this lawsuit, of and concerning any of the allegations stated in Plaintiffs' complaint.

Response to Request No. 8:

Defendant objects to this request to the extent that it seeks information, which is part of a canonical investigation, which is an ecclesiastical process and protected from discovery. Documents not part of the canonical process will be provided.

1 **Reason Why Further Responses Should be Compelled:**

2 There is no privilege in California for "canonical investigations." The privileges contained in the
3 Evidence Code are *exclusive and courts cannot create new ones*. See Ca Evid § 911; *Valley Bank*
4 *of Nevada v. Sup.Ct. (Barkett)* (1975) 15 Cal.3d 652, 656, 125 Cal.Rptr. 553, 555 (Emphasis
5 added). No legal authority was cited to substantiate these objections. Further, even if the
6 objections were valid, which plaintiff denies that they are, no privilege log was provided to the
7 plaintiffs. No objections were made under the attorney client privilege or work product doctrines
8 they are therefore waived. Since the objections are without substantial justification, the court
9 should order production of the documents.

6 **REQUEST FOR PRODUCTION NO. 9:**

7 All documents referring or relating to any investigations done by you prior to the filing of this
8 lawsuit, including but not limited to the notes, reports correspondences and interviews with
9 Plaintiff Kathleen Machado by Fr. Harmon Skillin on July 6, 2002 AND Eva Kristman in July of
10 2002. (This request also includes copies of any audio recordings of any of the interviews stated).

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

11 Defendant objects to this request to the extent that it seeks information, which is part of a
12 canonical investigation, which is an ecclesiastical process and protected from discovery, as it is
13 not subject to the jurisdiction of the court.

12 **Reason Why Further Responses Should be Compelled:**

13 There is no privilege of a "canonical investigation." The privileges contained in the Evidence
14 Code are *exclusive and courts cannot create new ones*. See Ca Evid § 911; *Valley Bank of*
15 *Nevada v. Sup.Ct. (Barkett)* (1975) 15 Cal.3d 652, 656, 125 Cal.Rptr. 553, 555 (Emphasis
16 added). As no objections were made under the attorney client privilege or work product
17 doctrines, they are waived and the court can assume that the information requested was not
18 obtained by an attorney or their agents, and further the information was not obtained in
19 "anticipation of litigation".

18 **REQUEST FOR PRODUCTION NO. 10:**

19 All documents including any communications between YOU and Fr. Harmon Skillen regarding
20 the INCIDENT.

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

21 Defendant objects to this request on the grounds that it seeks information, which is the subject of
22 a canonical investigation, which is an ecclesiastical process and not subject to the jurisdiction of
23 this court. Hence, discovery is not allowable.

23 **Reason Why Further Responses Should be Compelled:**

24 There is no privilege of a "canonical investigation." The privileges contained in the Evidence
25 Code are *exclusive and courts cannot create new ones*. See Ca Evid § 911; *Valley Bank of*
Nevada v. Sup.Ct. (Barkett) (1975) 15 Cal.3d 652, 656, 125 Cal.Rptr. 553, 555 (Emphasis
added). All other objections have been waived, as they were not asserted.

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

2 All documents referring (including but not limited to a copy of the recorded audio tape) to the
3 May 13, 2002 meeting between Defendant Ryan, Sister Barbara, Plaintiff Amber Lomas,
4 Plaintiff Kathleen Machado and Tony F. Machado.

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

5 Defendant objects to this request on the grounds that it seeks information which is the subject of
6 a canonical investigation, which is an ecclesiastical process and not subject to the jurisdiction of
7 this court. Hence, discovery is not allowable.

6 **Reason Why Further Responses Should be Compelled:**

7 There is no privilege of a "canonical investigation." The privileges contained in the Evidence
8 Code are *exclusive and courts cannot create new ones*. See Ca Evid § 911; *Valley Bank of*
9 *Nevada v. Sup.Ct. (Barkett)* (1975) 15 Cal.3d 652, 656, 125 Cal.Rptr. 553, 555 (Emphasis
10 added). All other objections have been waived. To allow the defendants to withhold an interview
11 with one of the plaintiffs would give defendants an unfair advantage at trial.

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

12 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to any statements, whether
13 written, oral, recorded or unrecorded, transcribed, summarized, or noted, which were made by a
14 party relating to the INCIDENT.

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

14 Defendant objects to this request on the grounds that it seeks information protected by both the
15 attorney-client privilege and attorney work product privilege, and joint defense privilege, as well
16 as to reveal trial strategy involving witnesses, which is not discoverable.

16 **Reason Why Further Responses Should be Compelled:**

17 No privilege log was provided to substantiate the attorney client privilege. In response to a
18 motion to compel answers, the burden is on the party claiming a privilege to establish whatever
19 preliminary facts are essential to the claim. See Ca Evid §§ 402, 405. The privilege applies only
20 to confidential communications between lawyer and client. As the allegations in the complaint
21 allege a criminal act, the "crime-fraud" exception applies to the attorney-client privilege with
22 regard to any statements regarding the molestation of minors. See, *BP Alaska Exploration v.*
23 *Sup.Ct. (Nahama)*, supra, 199 Cal.App.3d at 1262, 245 Cal.Rptr. at 697. Further, there is no
24 protection for conversations in the presence of others whose presence was not essential to further
25 the client's interests. Ca Evid § 952, therefore any communications between any of the parties
outside the presents of counsel are not protected by the privilege. Further, the work product
doctrine is not an absolute privilege. The Discovery Act does not define "work product" (beyond
the provision requiring greater protection for attorneys' mental impressions.). The definition of
"work product" is thus left to case law. Under case law, the mere fact that a lot of attorney
"work" has gone into obtaining the material does not make it "work product."

Work product protection extends only to "derivative" materials: i.e., those created by or derived
from an attorney's work on behalf of a client that reflects the attorney's evaluation or
interpretation of the law or the facts involved. "Nonderivative" materials are those that are only

1 evidentiary in character. These are not protected even if a lot of attorney "work" may have gone
2 into locating and identifying them. See *Mack v. Sup.Ct. (State of Calif.)* (1968) 259 Cal.App.2d
3 7, 10, 66 Cal.Rptr. 280, 28. Further plaintiff's, at a minimum, would like an in camera
4 inspection of the documents sought to be protected. Responding party's objection is so broad that
5 it is difficult to see how all communications between the parties' fall under each category of the
6 privileges as so stated. This request includes witnesses' statements, which fall outside the
7 privileges stated, and not all witnesses statements are privileged. Statements independently
8 prepared by witnesses are not "work product" because they do not reflect counsel's evaluation or
9 impressions of the case. Such statements cannot be protected from discovery by turning them
10 over to counsel. *Nacht & Lewis Architects, Inc. v. Sup.Ct. (McCormick)* (1996) 47 Cal.App.4th
11 214, 219, 54 Cal.Rptr.2d 575, 577, fn. 2. Finally, counsel for all defendants have admitted in
12 open court that no joint defense privilege exists which makes the assertion of this defense
13 patently false. There is no "joint defense privilege" as such in California" See, *Raytheon Co. v.*
14 *Sup.Ct. (Renault)* (1989) 208 Cal.App.3d 683, 687, 256 Cal.Rptr. 425, 428. At a minimum, there
15 is not justification, much less a substantial justification for most of the objections stated. Finally,
16 had the defendant met and conferred on these issues, the objections could have been sorted out
17 and discussed, and this motion could have been avoided.

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

20 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to any statements, whether
21 written, oral, recorded or unrecorded, transcribed, summarized, or noted, which were made by
22 any witnesses to the INCIDENT.

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

24 Defendant objects to this request on the grounds that it seeks information protected by both the
25 attorney-client privilege and attorney work product privilege, and joint defense privilege, as well
as to reveal trial strategy involving witnesses, which is not discoverable.

Reasons Why Further Responses Should Be Compelled:

The same rational as stated in Response to Defendants Response to No. 13 is applicable to
explain why this particular response is without justification.

REQUEST FOR PRODUCTION NO. 17:

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

Response to Request No. 17:

Defendant objects to this interrogatory request on the grounds that it seeks information protected
by the attorney-client privilege, the attorney-work product doctrine and the joint defense
privilege. It seeks to obtain discovery of the witnesses defendant intends to prepare for or call at
trial, which is not discoverable.

Reasons Why Further Responses Should Be Compelled:

The same rational as stated in Response to Defendants Response to Request No. 13 applies to
this request. In addition, a list of potential witnesses whom counsel has interviewed is protected

1 by qualified work product. Such list "necessarily reflect(s) counsel's evaluation of the case by
2 revealing which witnesses or persons . . . counsel deemed important enough to interview." *Nacht*
3 & *Lewis Architects, Inc. v. Sup.Ct. (McCormick)* (1996) 47 Cal.App.4th 214, 217, 54 Cal.Rptr.2d
4 575, 576 2. However, a list of persons who have turned over to counsel statements written or
5 recorded independently by them is not protected as work product. Such a list has no tendency to
6 reveal counsel's evaluation of the case. *Nacht & Lewis Architects, Inc. v. Sup.Ct. (McCormick)*,
7 supra, 47 Cal.App.4th at 217-218, 54 Cal.Rptr.2d at 577; Statements independently prepared by
8 witnesses are not "work product" because they do not reflect counsel's evaluation or impressions
9 of the case. Such statements cannot be protected from discovery by turning them over to counsel.
10 *Nacht & Lewis Architects, Inc. v. Sup.Ct. (McCormick)* (1996) 47 Cal.App.4th 214, 219, 54
11 Cal.Rptr.2d 575, 577, fn. 2. Likewise, statements made (verbally, in writing or in recordings) by
12 a witness to interviewing counsel are usually "evidentiary" (nonderivative) in nature, and hence
13 discoverable. *Kadelbach v. Amaral* (1973) 31 Cal.App.3d 814, 823, 107 Cal.Rptr. 720, 725.
14 As the responding defendant will not identify which statements taken from which witnesses
15 qualify for work product protection, the plaintiffs challenge the validity of this blanket,
16 boilerplate objection. Defense counsel has admitted that no joint defense privilege exists. Had
17 defendants met and conferred on these objections and compromised their position, this motion
18 would not have been necessary. No substantial justification exists for the objections stated.

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REQUEST FOR PRODUCTION NO. 18:

Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.2.

Response to Request No. 18:

Defendant objects to this interrogatory request on the grounds that it seeks information protected
by the attorney-client privilege, the attorney-work product doctrine and the joint defense
privilege. It seeks to obtain discovery of the witnesses defendant intends to prepare for or call at
trial, which is not discoverable.

Reason Why Further Answers Should Be Compelled:

The same reasons and rationale stated in response to No. 17 apply here. The form of the objection
is boilerplate.

REQUEST FOR PRODUCTION NO. 19:

Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.3.

Response to Request No. 19:

Defendant objects to this interrogatory request on the grounds that it seeks information protected
by the attorney-client privilege, the attorney-work product doctrine and the joint defense
privilege. It seeks to obtain discovery of the witnesses defendant intends to prepare for or call at
trial, which is not discoverable.

1 **Reason Why Further Answers Should Be Compelled:**

2 The same reasons and rational stated in response to request No. 17 apply here. The form of the
3 objection is boilerplate and therefore is per se sanctionable. *Korea Data Systems Co. Ltd. v.*
4 *Sup.Ct. (Amazing Technologies Corp.)* (1997) 51 Cal.App.4th 1513, 1516, 59 Cal.Rptr.2d 925,
5 926.

6 **REQUEST FOR PRODUCTION NO. 21:**

7 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
8 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.6.

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

10 Defendant objects to this interrogatory request on the grounds that it seeks information protected
11 by the attorney-client privilege, the attorney-work product doctrine and the joint defense
12 privilege. It seeks to obtain discovery of the witnesses defendant intends to prepare for or call at
13 trial, which is not discoverable.

14 **Reason Why Further Answers Should Be Compelled:**

15 The same reasons and rational stated in response to request No. 13 apply here. The form of the
16 objection is boilerplate.

17 **REQUEST FOR PRODUCTION NO. 28:**

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

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

21 Not applicable.

22 **Reason Why Further Answers Should Be Compelled:**

23 The request is absolutely applicable. Defendant's answer to the complaint includes allegations of
24 comparative fault, fault of third parties, and others as to each and every allegation set forth in the
25 complaint. Therefore, the request is completely applicable as it seeks all documents held by
defendants to support each and every affirmative defense stated in their answer. All objections
have been waived as to the form and substance of the question and defendants should be ordered
to identify and produce each and every document in their possession, which supports each and
every affirmative defense stated in their answer to the complaint. The law is crystal clear in this
regard. **"Discovery may relate to the claim or defense of the party seeking discovery, or of
any other party to the action."** Ca Civ Pro § 2017(a). (Emphasis added) Such information is
clearly within the scope of permissible discovery ("relevant to subject matter," etc.), and thus
enables a party to use discovery both to establish his or her own case and to attack the
adversary's case.

1 **REQUEST FOR PRODUCTION NO. 29:**

2 All documents including any communications between YOU and Sister Barbara regarding the
3 INCIDENT.

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

5 Defendant objects to this request on the grounds that it seeks information which is part of a
6 canonical investigation, which is an ecclesiastical process not subject to the jurisdiction of this
7 court, and is not subject to discovery.

8 **Reason Why Further Answers Should Be Compelled:**

9 There is no privilege of a "canonical investigation." The privileges contained in the Evidence
10 Code are *exclusive and courts cannot create new ones*. See Ca Evid § 911; *Valley Bank of*
11 *Nevada v. Sup.Ct.* (Barkett) (1975) 15 Cal.3d 652, 656, 125 Cal.Rptr. 553, 555 (Emphasis
12 added). All other objections have been waived. The objections are boilerplate and sanctionable.

13 **REQUEST FOR PRODUCTION NO. 30:**

14 All documents reflecting and referring to all telephone calls, (including cellular phones) and
15 including copies of all telephone bills, telephone logs and telephone journals evidencing all
16 telephone calls placed by defendant Arakal, for the months of May through December 2001.

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

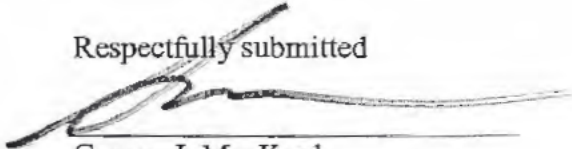
18 Defendant objects to this request on the grounds that it seeks information, which violates the
19 right of privacy guaranteed by the California Constitution. It further seeks information, which is
20 neither relevant nor calculated to lead to the discovery of admissible evidence.

21 **Reason Why Further Answers Should Be Compelled:**

22 The question is relevant to confirm our independent investigation that Fr. Arakal, calls little girls
23 at home when their parents are not home. It is relevant to prove pattern and practice with regard
24 to defendant Arakal's predatory habits with regard to young girls. Further plaintiff is only
25 seeking to prove that Defendant Arakal did in fact call young girls homes during afternoon
hours. This information is not obtainable from any other source. Defendant does not cite one case
or statutory authority to support this objection.

Dated: February 6, 2004

Respectfully submitted


George J. MacKoul
Attorney for Plaintiffs

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14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 \$36.30 - 200402098020

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 FORM**
) **INTERROGATORIES FROM**
) **DEFENDANT DIOCESE OF**
) **STOCKTON; REQUEST FOR**
) **SANCTIONS PURSUANT TO C.C.P. 2023**
) **AGAINST DIOCESE OF STOCKTON**
) **AND/OR DEFENDANT'S COUNSEL OF**
) **RECORD; MEMORANDUM OF POINTS**
) **AND AUTHORITIES IN SUPPORT OF**
) **MOTION, DECLARATION OF GEORGE**
) **J. MACKOUL IN SUPPORT OF MOTION**
) **TO COMPEL.**

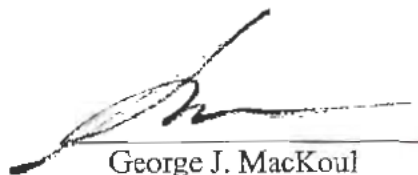
27 [Filed Concurrently with Separate
28 Statement Of Questions and Answers in
29 Dispute, Pursuant to California Rule of
30 Court 335]

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 the

1 form interrogatories, 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 and/or their counsel pay
4 monetary sanction to moving party in the sum of \$1,636.30 for the reasonable expenses and
5 attorney's fees incurred by the moving party in connection with this proceeding. This motion will
6 be made on the grounds that the defendants responses to the form interrogatories are relevant to
7 the subject matter of this action, and do not relate to privileged matters, and that the said
8 defendant's refusal 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 6, 2004


George J. MacKoul
SABBAH AND MACKOUL
Attorneys for the Plaintiffs

1 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION

2 I.
3 INTRODUCTION

4 This is a lawsuit involving allegations of sexual abuse against 13-year-old plaintiff,
5 Rachel Lomas and 11-year-old plaintiff, Amber Lomas by defendant Fr. Joseph Arakal, who at
6 the time of the abuse was acting in his course and scope as a Catholic Priest for the Defendant
7 Diocese of Stockton. The balance of the allegations stated in the complaint are against Defendant
8 Illo and Defendant Arakal for defamation against the mother of the minor children in an apparent
9 cover up of the abuse and also Respondent Superior Liability against the Defendant Diocese for
10 the defamatory behavior of both priests.

11 On January 6, 2003 plaintiff, Rachel Lomas propounded Form Interrogatories, Set No. 1,
12 on defendant Diocese of Stockton (Exhibit A)

13 On March 13, 2003, defendant Diocese of Stockton filed responses to the Form
14 Interrogatories (Exhibit B).

15 On June 10, 2003, plaintiff's counsel wrote a meet and confer letter to defendant's
16 counsel. Said letter is attached as Exhibit C. On October 10, 2003, defendant granted plaintiff an
17 **open ended extension** to file this motion to compel after granting similar closed end extensions
18 (Exhibit D).

19 To date no supplemental responses to the form interrogatories have been filed by
20 defendant and defendants have **not** met and conferred with plaintiff's counsel regarding the
21 issues stated in his June 10, 2003 letter. Therefore, plaintiff was left with no choice but to file
22 this motion.
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II.

THE COURT HAS THE DISCRETION TO GRANT A MOTION TO COMPEL
FURTHER RESPONSES TO INTERROGATORIES IF THE COURT FINDS THAT
THE INFORMATION SOUGHT IS RELATED TO THE ISSUES FRAMED BY THE
PLEADINGS, AND THAT THE INFORMATION SOUGHT HAS A PRACTICAL
BENEFIT TO THE PROPOUNDING PARTY.

The Court's ruling usually is based on consideration of the following factors:

- The relationship of the information sought to the issues framed in the pleadings;
- The likelihood that disclosure will be of practical benefit to the party-seeking discovery;
- The burden or expense likely to be encountered by the responding party in furnishing the information sought. *Columbia Broadcasting System, Inc. v. Sup.Ct.* (1968) 263 Cal.App.2d 12, 19, 69 Cal.Rptr. 348, 352. See *Weil and Brown Civil Procedure Before Trial*, Chapter 8, Section 8:1181.

The arguments set forth in the moving party's CRC 335 statement file separately and concurrently herein, clearly shows that the **Judicially Approved Form Interrogatories** are relevant to either the discovery of admissible evidence at trial, or relate directly to the issues alleged in plaintiff's complaint, or defendants' answer.

Therefore further supplemental answers should be ordered by the court to be filed by the defendant.

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III.

DEFENDANT HAS A DUTY TO INVESTIGATE AND RESPOND FULLY TO SPECIAL INTERROGATORIES.

The code requires that a party who responds to interrogatories must fulfill two separate and distinct duties, when providing responses to an opposing party. The first duty is the *duty to obtain information*. “If the responding party does not have personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but *shall make a reasonable effort to obtain information* by inquiry to other natural persons or organizations, except where that information is equally available to the propounding party” C.C.P. Section 2030 (f) (1) (emphasis added), also see *Deyo v. Kilbourne* (1979) 84 CA 3d 771, 783). “...unlike depositions, interrogatory answers are prepared with the assistance of counsel. Therefore, a broader duty of response is justified” See *Weil and Brown, Civil Procedure Before Trial* (1998) Chapter 8 page 8F-36, Section 8:1053. In fulfilling a party’s duty to “obtain information”, case law is specific: *A party must obtain information from sources under the parties control.*

The second duty a responding party has is the “*duty to provide complete answers*”. Each answer given in a parties response must be “as complete and straightforward as the information reasonably available to the responding party permits. *If an interrogatory cannot be answered completely, it shall be answered to the extent possible.*” C.C. P. 2030 (f) (1) (emphasis added). Evasive answers are contrary to the rule of law, and are therefore improper. “An answer which supplies only part of the information requested is insufficient.” See, *Weil and Brown, Civil Procedure Before Trial*, supra, Section 8:1048. “*Nor may a party, by defily-worded conclusion answers, evade a series of explicit questions.*” See, *Deyo v. Kilbourne*, supra at 771, 783 (emphasis added). “Interrogatories should not be read by the recipient in an artificial manner

1 designed to assure that answers are not truly responsive” See, *Weil and Brown, Civil Procedure*
2 *Before Trial*, supra at Section 8:1048. “*Parities must state the truth, and nothing but the truth*
3 *in answering written interrogatories.*” See, *Union Bank v. Superior Court* (1995) 31 CA 4th
4 573, 580 (emphasis added).

5 As set forth in the concurrently filed (CRC 335) Statement of Questions and Answers in
6 Dispute, it is clear that defendant has failed in each of the duties described above.

7
8 **IV.**

9 **THE BURDEN IS ON THE RESPONDING PARTY TO JUSTIFY ANY OBJECTIONS**
10 **OR INCOMPLETE ANSWERS.**

11
12 If a timely motion to compel has been filed, the burden is on the responding party to
13 justify any objection or failure fully to answer the interrogatories. *Coy v. Sup.Ct. (Wolcher)*
14 (1962) 58 Cal.2d 210, 220-221, 23 Cal.Rptr. 393, 398; *Fairmont Ins. Co. v. Sup.Ct. (Stendell)*
15 (2000) 22 Cal.4th 245, 255, 92 Cal.Rptr.2d 70, 77

16
17 **V.**

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

22
23 C.C.P. 2023 (a) (9) states in part: “Notwithstanding the *outcome* of the particular
24 discovery motion, the court **shall** impose a monetary sanction ordering that any party or attorney
25

1 who fails to confer a required, pay the reasonable, expenses, **including attorney's fees**, incurred
2 by anyone as a result of that conduct." (Emphasis added)

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

6
7 **VI.**

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

12
13 Failure to respond to interrogatories, evasive responses, and objections lacking
14 substantial justification are "misuses of the discovery process." *Ca Civ Pro* § 2023(a)(4)-(6);

15 The separate filed CRC 335 Statement, filed concurrently within explains to the court
16 why the responses lack substantial justification for being evasive and incomplete and not
17 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 Form Interrogatories Set No. 1, and further to award the moving party sanctions in accordance with the attached declaration of Attorney MacKoul.

Dated: February 6, 2004



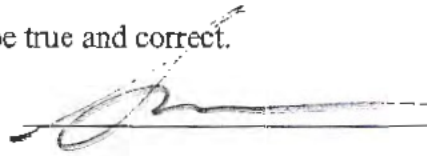
George J. MacKoul
SABBAH AND MACKOUL
Attorneys for the Plaintiffs

1 8. My average billable hourly rate is \$200.00 per hour as this is the rate and therefore I am
2 asking the court to award me 8 hours of time or (8 x \$200.00 plus filing fee for this
3 motion of \$36.30) or \$1,636.30 be awarded to plaintiff's counsel, for the cost of bringing
4 this motion.

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

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

10 Date: February 6, 2004



11 George J. MacKoul
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EXHIBIT A

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

Sec. 1. Instructions to All Parties

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

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

Sec. 2. Instructions to the Asking Party

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

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

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

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

(e) Additional interrogatories may be attached.

Sec. 3. Instructions to the Answering Party

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

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

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

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

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

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

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

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

(DATE)

(SIGNATURE)

Sec. 4. Definitions

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

(a) (Check one of the following):

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

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

(Continued)

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

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

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

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

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

Sec. 5. Interrogatories

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

CONTENTS

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

1.0 Identity of Persons Answering These Interrogatories

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

2.0 General Background Information — Individual

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

(Continued)

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

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

3.0 General Background Information — Business Entity

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

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

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

4.0 Insurance

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

5.0 [Reserved]

6.0 Physical, Mental, or Emotional Injuries

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

(Continued)

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

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

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

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

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

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

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

7.0 Property Damage

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

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

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

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

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

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

8.0 Loss of Income or Earning Capacity

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

8.2 State:

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

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

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

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

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

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

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

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

9.0 Other Damages

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

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

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

10.0 Medical History

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

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

(Continued)

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

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

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

11.0 Other Claims and Previous Claims

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

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

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

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

12.0 Investigation — General

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(Continued)

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

(b) the date of the inspection.

13.0 Investigation — Surveillance

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

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

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

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

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

(a) the title;

(b) the date;

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

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

14.0 Statutory or Regulatory Violations

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

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

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

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

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

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

15.0 Special or Affirmative Defenses

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

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

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

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

16.0 Defendant's Contentions — Personal Injury

[See Instruction 2(c)]

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

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

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

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

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

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

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

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

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

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

(a) identify it;

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

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

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

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

(a) identify each service;

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

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

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

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

(a) identify each cost.

(Continued)

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

16.6 Do you contend that any part of the loss of earnings or income claimed by plaintiff in discovery proceedings thus far in this case was unreasonable or was not caused by the **INCIDENT**? If so:

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

16.7 Do you contend that any of the property damage claimed by plaintiff in discovery proceedings thus far in this case was not caused by the **INCIDENT**? If so:

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

16.8 Do you contend that any of the costs of repairing the property damage claimed by plaintiff in discovery proceedings thus far in this case were unreasonable? If so:

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

16.9 Do **YOU OR ANY ONE ACTING ON YOUR BEHALF** have any **DOCUMENT** (for example, insurance bureau index reports) concerning claims for personal injuries made before or after the **INCIDENT** by a plaintiff in this case? If so, for each plaintiff state:

- (a) the source of each **DOCUMENT**;
- (b) the date each claim arose;
- (c) the nature of each claim;
- (d) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

16.10 Do **YOU OR ANYONE ACTING ON YOUR BEHALF** have any **DOCUMENT** concerning the past or present physical, mental, or emotional condition of any plaintiff in this case from a **HEALTH CARE PROVIDER** not previously identified (except for expert witnesses covered by Code of Civil Procedure section 2034)? If so, for each plaintiff state:

- (a) the name, **ADDRESS**, and telephone number of each **HEALTH CARE PROVIDER**;
- (b) a description of each **DOCUMENT**;
- (c) the name, **ADDRESS**, and telephone number of the **PERSON** who has each **DOCUMENT**.

17.0 Responses to Request for Admissions

17.1 Is your response to each request for admission served with these interrogatories an unqualified admission? If not, for each response that is not an unqualified admission:

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

20.0 How the Incident Occurred — Motor Vehicle

20.1 State the date, time, and place of the **INCIDENT** (closest street **ADDRESS** or intersection).

20.2 For each vehicle involved in the **INCIDENT**, state:

- (a) the year, make, model, and license number;
- (b) the name, **ADDRESS**, and telephone number of the driver;
- (c) the name, **ADDRESS**, and telephone number of each occupant other than the driver;
- (d) the name, **ADDRESS**, and telephone number of each registered owner;
- (e) the name, **ADDRESS**, and telephone number of each lessee;
- (f) the name, **ADDRESS**, and telephone number of each owner other than the registered owner or lien holder;
- (g) the name of each owner who gave permission or consent to the driver to operate the vehicle.

20.3 State the **ADDRESS** and location where your trip began, and the **ADDRESS** and location of your destination.

20.4 Describe the route that you followed from the beginning of your trip to the location of the **INCIDENT**, and state the location of each stop, other than routine traffic stops, during the trip leading up to the **INCIDENT**.

20.5 State the name of the street or roadway, the lane of travel, and the direction of travel of each vehicle involved in the **INCIDENT** for the 500 feet of travel before the **INCIDENT**.

(Continued)

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

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

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

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

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

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

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

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

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

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

50.0 Contract

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

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

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

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

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

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

(End)

PROOF OF SERVICE

COMMONWEALTH OF
MASSACHUSETTS
BARNSTABLE COUNTY

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

On January 06, 2003, I served the within: **FORM INTERROGATORIES SET ONE DIRECTED TO DEFENDANT DIOCESE OF STOCKTON BY PLAINTIFF MACHADO.** _____ on the interested parties in said action by transmitting a true copy of said document by facsimile machine. The documents listed above to the fax number(s) set forth below on this date from (508) 495-4115, the transmission was reported as complete and without error. Said fax transmission occurred as stated in the transmission record attached hereto. Said fax transmission was directed to the names and addresses stated below.

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

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

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

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

CO-COUNSEL FOR PLAINTIFF

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

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

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

COUNSEL FOR DEFENDANT ARAKAL

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

Executed on January 6, 2003 at Falmouth, Massachusetts.



George J. MacKoul

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)
11 as Guardian Ad Litem for RACHEL LOMAS)
and AMBER LOMAS)

12)
13 Plaintiff,)

14 vs.)

15 FR. JOSEPH ILLO, FR. FRANCIS JOSEPH,)
a.k.a. FR. FRANCIS ARAKAL, FR.)
16 RICHARD RYAN, BISHOP STEVEN)
BLAIRE AND THE DIOCESE OF)
STOCKTON)

17)
18 Defendant.)

Case No. CV 018440

**RESPONSES TO FORM
INTERROGATORIES, SET NO. ONE**

19
20 PROPOUNDING PARTY: RACHEL LOMAS

21 RESPONDING PARTY: Defendant, THE ROMAN CATHOLIC BISHOP OF
22 STOCKTON, a corporation sole

23 SET NO.: ONE
24

25 Defendant THE ROMAN CATHOLIC BISHOP OF STOCKTON, a corporation sole, hereby
26 provides the following Responses to Plaintiff RACHEL LOMAS' Form Interrogatories, Set No.
27

28 Responses to Form Interrogatories, Set No. One

1 One. These responses are given while discovery is still in progress and without prejudice to
2 amending the responses based upon things discovered at a later date, or omitted from these responses
3 as a result of good faith oversight.

4 **RESPONSES TO FORM INTERROGATORIES**

5 **Response to Form Interrogatory No. 1.1:**

6 Paul N. Balestracci; Stephen E. Blaire; Richard J. Ryan.

7 **Response to Form Interrogatory No. 3.1:**

8 Yes.

9 (a) The Roman Catholic Bishop of Stockton, a Corporation Sole.

10 (b) None.

11 (c) Stockton, California.

12 (d) 1105 N. Lincoln Street, Stockton, California 95204.

13 (e) Yes.

14 **Response to Form Interrogatory No. 3.2:**

15 No.

16 **Response to Form Interrogatory No. 3.3:**

17 No.

18 **Response to Form Interrogatory No. 3.4:**

19 No.

20 **Response to Form Interrogatory No. 3.5:**

21 No.

22 **Response to Form Interrogatory No. 3.6:**

23 No.

24 **Response to Form Interrogatory No. 4.1:**

25 Yes. Policy is contained in the responses to request for production of documents.
26
27

1 **Response to Form Interrogatory No. 4.2:**

2 No.

3 **Response to Form Interrogatory No. 12.1:**

4 The term "incident" is ambiguous, but based upon allegations in Plaintiff's complaint, the
5 witnesses appear to be Father Joseph Illo, Father Francis Arakal, Amber Lomas, Rachel Lomas,
6 Kathleen Machado, Mary Mullins, Owen Kummerle, Jackie Tucker, Rosario Hernandez, Yvonne
7 McGloughlin, Rose Wyeth, and Kathleen Machado.

8 **Response to Form Interrogatory No. 12.2:**

9 Defendant objects to this interrogatory on the grounds that it seeks information protected by
10 both the attorney-client privilege and attorney work product privilege, as well as to reveal trial
11 strategy involving witnesses, which is not discoverable.

12 **Response to Form Interrogatory No. 12.3:**

13 Defendant objects to this interrogatory on the grounds that it seeks information protected by
14 both the attorney-client privilege and attorney work product privilege, as well as to reveal trial
15 strategy involving witnesses, which is not discoverable.

16 **Response to Form Interrogatory No. 12.4:**

17 No.

18 **Response to Form Interrogatory No. 12.5:**

19 No.

20 **Response to Form Interrogatory No. 12.6:**

21 Defendant objects to this interrogatory on the grounds that it seeks information protected by
22 both the attorney-client privilege and attorney work product privilege, as well as to reveal trial
23 strategy involving witnesses, which is not discoverable.

24 **Response to Form Interrogatory No. 13.1:**

25 No.
26
27

1 **Response to Form Interrogatory No. 13.2:**

2 No.

3 **Response to Form Interrogatory No. 14.1:**

4 No.

5 **Response to Form Interrogatory No. 14.2:**

6 No.

7 **Response to Form Interrogatory No. 15.1:**

8 Defendant objects to this interrogatory on the grounds that it requests information protected
9 by the attorney-client privilege and attorney work product privilege. Defendant further objects to
10 this interrogatory as it purports to obtain what amounts to a verified response to an unverified
11 complaint. Defendant further objects in that the term "material allegations" is not defined and the
12 complaint was not responded to on a point by point basis.

13 **Response to Form Interrogatory No. 17.1:**

14 (a) 1, 2, 3, 4, 5, 7, 8, 9, 10, 11, 24.

15 (b) Request No. 1. There were such policies.

16 Request No. 2. No such allegations were made.

17 Request No. 3. No such allegations were made.

18 Request No. 4. No such allegations were made.

19 Request No. 5. There were no such allegations.

20 Request No. 8. There were no such allegations.

21 Request No. 9. There have been no such complaints.

22 Request No. 24. Father Iilo did not make the statements alleged.

23 ///

24 ///

25 ///

26 ///

1 (c) The witnesses are listed in Response to Form Interrogatory No. 12.1. Additionally,
2 Stephen E. Blaire, Sister Barbara Thiella, and Monsignor Richard J. Ryan are witnesses to the timing
3 of allegations.

4
5 Dated: March 13, 2003

NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION

6
7 By: 

8 PAUL N. BALESTRACCI
9 Attorneys for Defendants,
10 FR. JOSEPH ILLO, MONSIGNOR RICHARD J.
11 RYAN, BISHOP STEPHEN E. BLAIRE, and
12 THE ROMAN CATHOLIC BISHOP OF
13 STOCKTON, a Corporation Sole
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PROOF OF SERVICE
CCP 1013a

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is 509 W. Weber Avenue, Stockton, California 95203. On March 13, 2003, I served the within documents:

RESPONSES TO FORM INTERROGATORIES, SET NO. ONE



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



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



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



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

Via Federal Express

George Joseph MacKoul, Esq.
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, 6th 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)*

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

3 Executed this 13th day of March 2003, at Stockton, California.
4


5 
6 _____
7 CARY NUNES
8
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EXHIBIT C

SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

49 Locust Street

Falmouth, Massachusetts 02540

608-495-4955

Fax: 508-495-4115

E-mail: sabbahmackoul.com

4255 Main Street
Riverside, California 92501

909-882-2021

Fax: 909-882-7341

355 West Las Palmas Avenue
Patterson, California 95363

209-892-2233

Fax: 209-892-2572

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

June 10, 2003

Lomas et. al v. Iilo, et. alMachadoC

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

COPY

VIA FACSIMILE AND U.S. MAIL

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

We are in receipt of your responses by Defendant Diocese of Stockton's Responses to Form Interrogatories, Set No. 1 to Plaintiff's form interrogatories, set no. 1 mailed to our Falmouth office by overnight mail on March 14, 2003,

However, the proof of service signed by your assistant Cary Nunes is dated March 13, 2003. Accordingly, your responses are beyond the statutory time period, and therefore all objections to this discovery are hereby waived. Failing to respond within the time limit waives most objections to the interrogatories . . . including claims of privilege and "work product" protection. Ca Civ Pro § 2030(k); see *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906, 169 Cal.Rptr. 42, 43-44]

In addition the responses propounded by your client, Diocese of Stockton are incomplete and evasive. Please consider this letter to be a formal meet and confer letter under the *California Code of Civil Procedure Sections 2030 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 27th 2003.**

**DEFENDANT, DIOCESE OF STOCKTON'S RESPONSES TO FORM
INTERROGATORIES, SET NO.1**

The code requires that a party who responds to interrogatories must fulfil two separate and distinct duties, when providing responses an opposing party.

The first duty is the *duty to obtain information*. "If the responding party does not personal knowledge sufficient to respond fully to an interrogatory, that party shall so state, but *shall make a reasonable effort to obtain information* by inquiry to other natural persons or organizations, except where that information is equally available to the propounding party" C.C.P. Section 2030 (f) (1) (emphasis added), also see *Deyo v. Kilbourne* (1979) 84 CA 3d 771, 783). "...unlike depositions, interrogatory answers are prepared with the assistance of counsel. Therefore, a broader duty of response is justified" See *Weil and Brown, Civil Procedure Before Trial* (1998) Chapter 8 page 8F-36, Section 8:1053. In fulfilling a party's duty to "obtain information", case law is specific: *A party must obtain information from sources under the parties control*. "A party cannot plead ignorance to information which can be obtained from sources under his control" *Weil and Brown, Civil Procedure Before Trial*, supra at Section 8:1054, citing *Deyo v. Kilbourne*, supra at 782.

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

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

Form Interrogatory 4.2

At the time of the accident, was there in effect any policy of insurance through which you were or might be insured any manner (for example, primary, pro-rata, or excess liability coverage or medical expense coverage) for the damages, claims, or actions that have arisen out of the accident? If so, for each policy state:

- (a) The kind of coverage;
- (b.) The name and address of the insurance company;
- (c) The name, address, and telephone number of each named insured;
- (d) The policy number;
- (e) The limits of coverage for each type of coverage contained in the policy
- (f) Whether any reservation of rights or controversy or coverage dispute exists between you any insurance company;
- (g) the name, address and telephone number of the custodian of the policy.

Response to Form Interrogatory No. 4.1:

Yes. Policy is contained in the responses to request for production of documents.

Reason Why Further Answers Should Be Compelled:

It is not proper to answer by directing the propounding party to documents. " If the question requires reference to some other document, it should be identified and its contents **summarized so that the answer by itself is fully responsive** to the interrogatory. *Deyo v. Kilbourne*, supra, 84 Cal.App.3d at 783-784, 149 Cal.Rptr. at 510.

Please send an amended, verified and complete response to this interrogatory.

Form interrogatory No. 12.1

State the name, address and telephone number of each individual:

- (a) who witnessed the incident or the events occurring immediately before after the incident;
- (b) who made any statements at the scene of the incident;
- (c) who heard any statements made about the incident by any individual at the scene;
- (d) who you or anyone acting on your behalf claim has knowledge of the incident;

Response to Form Interrogatory No. 12.1:

The term "incident" is ambiguous, but based upon allegations in Plaintiff's complaint, the witnesses appear to be Father Joseph Ilio, Father Francis Arakal, Amber Lomas, Rachel Lomas, Kathleen Machado, Mary Mullins, Owen Kummerle, Jackie Tucker, Rosario Hernandez, Yvonne McGloughlin, Rose Wyeth, and Kathleen Machado.

Reason Why Further Answers Should Be Compelled:

These are judicial counsel approved form interrogatories, no case law or other authority has held that this particular question is "ambiguous". The complaint is detailed and sets forth each and every allegation against the responding party clearly and distinctly. No Demurrer was ever filed by the responding party alleging that the allegations in the complaint were improperly plead. Further, the responding party has a duty to answer each subpart question completely and separately. Plaintiff's have a right to know which witnesses witnessed each event stated in the complaint, heard statements at each and every scene described in the complaint, made statements at the each and every scene and (with the exception of named experts) the identity of every individual acting on the responding parties behalf who has knowledge of the incident.

Please provide a supplemental, verified response to this interrogatory, giving a complete response to each subpart (a)-(d).

Form Interrogatory No. 12. 2

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

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

Response to Form Interrogatory No. 12.2:

Defendant objects to this interrogatory on the grounds that it seeks information protected by both the attorney-client privilege and attorney work product privilege, as well as to reveal trial strategy involving witnesses, which is not discoverable.

Reason Why Further Answers Should Be Compelled:

The responses are beyond the statutory time period, and therefore all objections to this discovery are hereby waived. Failing to respond within the time limit waives most objections to the interrogatories . . . including claims of privilege and "work product" protection! Ca Civ Pro § 2030(k); see Leach v. Sup.Ct. (1980) 111 Cal.App.3d 902, 905-906, 169 Cal.Rptr. 42, 43-44.

Please provide supplemental, complete and verified responses to this interrogatory.

Please provide supplemental, complete and verified responses to this interrogatory.

Form Interrogatory No. 15.1:

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

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

Response to Form Interrogatory No. 15.1:

Defendant objects to this interrogatory on the grounds that it requests information protected by the attorney-client privilege and attorney work product privilege. Defendant further objects to this interrogatory as it purports to obtain what amounts to a verified response to an unverified complaint. Defendant further objects in that the term "material allegations" is not defined and the complaint was not responded to on a point by point basis.

Reasons Why Further Answers Should Be Compelled:

The responses are beyond the statutory time period, and therefore all objections to this discovery are hereby waived. Failing to respond within the time limit waives most objections to the interrogatories . . . including claims of privilege and "work product" protection! Ca Civ Pro § 2030(k); see *Leach v. Sup.Ct.* (1980) 111 Cal.App.3d 902, 905-906, 169 Cal.Rptr. 42, 43-44.

This interrogatory is asking the responding party to **substantiate** each affirmative defense stated in their answer to the complaint. We are asking you to verify your answer, but plaintiff's are entitled to know what **facts and evidence** you have to support, in some cases, illogical defenses to this case. Just as plaintiffs may be sanctioned for filing frivolous lawsuits, defendants may be sanctioned for asserting nonmeritorious cross-complaints or denials and defenses in their answers--e.g., answers containing dozens of affirmative defenses (waiver, estoppel, laches, unclean hands, etc.) for which there is **no evidentiary support**, please see or Ca Civ Pro § 128.7 (b) (1-3) requiring a party to not present an unmeritorious defense which will increase the cost of litigation. If you disagree with this line of argument, then please provide legal authority to support your objections of proper pleading practice, waiver and speculation. An attorney in California cannot simply file a baseless complaint or baseless answer. As so stated in C.C.P. 128.7 (b) by **presenting an answer to the court** the attorney is certifying that "to the best of the persons knowledge, information, and belief, formed **after an inquiry reasonable under the circumstances**"...that it is not being presented for an improper purpose to

harass or cause unnecessary delays and that the affirmative defenses have facts to support said defense.

Please provide a supplemental, verified response to this interrogatory.

Form Interrogatory 17.1:

Is your response to each request for admission served with these interrogatories and unqualified admission? If not, for each response that is not an unqualified admission:

- (a) state the number of the request;
- (b) state all facts upon which you base your response;
- (c) state the names, addresses and telephone numbers of all persons who have knowledge of those facts;
- (d) identify all documents and other tangible things that support your response and state the name, address and telephone number of the person who has each document or thing.

Response to 17.1 (a):

No responses were given for Request for admissions, numbers 11, 12, 13, 13 (second), 14-23 and 25 and 26 as they are qualified admissions as your responses are late and therefore all objections to these responses are waived. Therefore you must identify these responses in a supplemental response.

Reason Why Further Responses Should Be Compelled:

These are judicially **approved** form interrogatories. You have a duty to provide complete answers, since your objections have been waived you must produce supplemental responses to each of these unqualified admissions.

Please provide an amended, verified response to this interrogatory.

Response to 17.1 (b):

No responses were given to certain unqualified admissions. Since objections have been waived to Request for admissions, numbers 11, 12, 13, 13 (second), 14-23 and 25 and 26, then you must provide all facts to support each and every unqualified admission. This is particularly true with regard to all facts which you had knowledge of at the time you filed your affirmative defenses with the court.

Reason Why Further Responses Should Be Compelled:

These are judicially **approved** form interrogatories. You have a duty to provide complete answers, since your objections have been waived you must produce supplemental responses to each of these unqualified admissions.

Please provide an amended, verified response to this interrogatory.

Response to 17.1 (c):

No responses were given with respect to Request for admissions, numbers 11, 12, 13, 13 (second), 14-23 and 25 and 26. Those admissions contained objections, which were waived, therefore the admissions are unqualified and need to be responded to.

The response given with respect to Request for Admission numbers: 1-9 and 24: "The witnesses are listed in Response to Form Interrogatory No. 12.1. Additionally, Stephen E. Blaire, Sister Barbara Thiella, and Monsignor Richard J. Ryan are witnesses to the timing of allegations".

Reason Why Further Responses Should Be Compelled:

These are judicially **approved** form interrogatories. You have a duty to provide complete answers, since your objections have been waived you must produce supplemental responses to each unqualified admission.

Responding party also did not disclose the current addresses and telephone numbers of the witnesses identified in the response.

Please provide an amended, verified response to this interrogatory.

Response to 17.1 (d):

No responses were given.

Reason Why Further Responses Should Be Compelled:

These are judicially **approved** form interrogatories. You have a duty to provide complete answers, since your objections have been waived you must produce supplemental responses to each of these unqualified admissions.

Please provide an amended, verified response to this interrogatory.

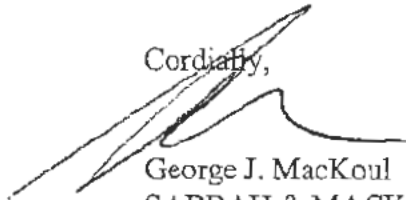
The discovery propounded and the responses requested contain important evidence necessary for the plaintiff(s) to fully and fairly evaluate their claim against your clients. Improper and unfair withholding of this information can only cause unnecessary court delays and do nothing but increase the cost 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". The signature is stylized with a large, sweeping initial "G" and "M".

George J. MacKoul
SABBAH & MACKOUL

GJM