

EXHIBIT D


AGREEMENT TO EXTEND TIME TO MAKE MOTION TO COMPEL

Re: Machado v. Illo, 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, Illo, 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, Illo, Diocese of Stockton and
Blaire.

Dated: 10-7-03



GEORGE J. MACKOUL
For Plaintiffs

OP

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
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12 Phone: 408-286-5150
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14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 \$36.40 - 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 I-100,)
26 Defendants)

Case No.: CV018440

**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.**


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

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

1 Special Interrogatories, Set no. I, 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, Diocese of Stockton, a
4 sole Corporation and/or their attorney of record pay a monetary sanction to moving party in the
5 sum of \$1,436.30 for the reasonable expenses and attorney's fees incurred by the moving party
6 in connection with this proceeding. This motion will be made on the grounds that the defendants
7 responses to the Special Interrogatories are relevant to the subject matter of this action, and do
8 not relate to privileged matters, and that the said defendant's refusal to properly and thoroughly
9 answer same is without substantial justification.

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

12
13 Dated: February 6, 2004

14 
15 George J. MacKoul
16 SABBAH AND MACKOUL
17 Attorneys for the Plaintiffs
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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 Special Interrogatories, Set No.
12 1, on defendant Diocese of Stockton (Exhibit A)

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

15 On June 13, 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 Special 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 13, 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 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 Special 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 defendants.

1 III.

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

4 The code requires that a party who responds to interrogatories must fulfill two separate
5 and distinct duties, when providing responses to an opposing party. The first duty is the *duty to*
6 *obtain information*. “If the responding party does not have personal knowledge sufficient to
7 respond fully to an interrogatory, that party shall so state, but *shall make a reasonable effort to*
8 *obtain information* by inquiry to other natural persons or organizations, except where that
9 information is equally available to the propounding party” C.C.P. Section 2030 (f) (1) (emphasis
10 added), also see *Deyo v. Kilbourne* (1979) 84 CA 3d 771, 783). “...unlike depositions,
11 interrogatory answers are prepared with the assistance of counsel. Therefore, a broader duty of
12 response is justified” See *Weil and Brown, Civil Procedure Before Trial* (1998) Chapter 8 page
13 8F-36, Section 8:1053. In fulfilling a party’s duty to “obtain information”, case law is specific:
14 *A party must obtain information from sources under the parties control.*

15
16 The second duty a responding party has is the “*duty to provide complete answers*”. Each
17 answer given in a parties response must be “as complete and straightforward as the information
18 reasonably available to the responding party permits. *If an interrogatory cannot be answered*
19 *completely, it shall be answered to the extent possible.*” C.C. P. 2030 (f) (1) (emphasis added).
20 Evasive answers are contrary to the rule of law, and are therefore improper. “An answer which
21 supplies only part of the information requested is insufficient.” See, *Weil and Brown, Civil*
22 *Procedure Before Trial*, supra, Section 8:1048. “*Nor may a party, by defily-worded conclusion*
23 *answers, evade a series of explicit questions.*” See, *Deyo v. Kilbourne*, supra at 771, 783
24 (emphasis added). “Interrogatories should not be read by the recipient in an artificial manner
25

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 As evidenced by the separately filed 335 statement, defendant has no justification for the
17 objections and the incomplete responses filed.

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V.

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

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

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

VI.

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

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


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

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VII.
CONCLUSION

Based on the foregoing, as well as the arguments set forth in the moving parties separately filed CRC 335 Statement the moving party respectfully requests that the court order the defendant, Diocese of Stockton to supplement their responses to Special 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

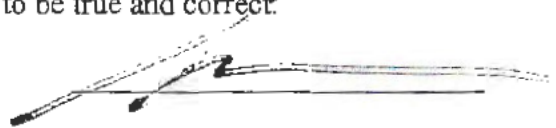
1 b. I spent approximately **3 hours** drafting this notice of motion and motion and
2 separately filed CRC 335 Statement.

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

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

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

12 Date: February 6, 2004



13 George J. MacKoul
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Exhibit A

1 George J. MacKoul (Bar No. 170586)
2 SABBAH AND MACKOUL
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4 49 Locust Street
5 Palmouth, Mass 02540
6 Phone: 508-495-4955
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8 355 West Las Palmas Avenue
9 Patterson, California
10 Phone: 209-892-2233
11 Fax: 209-892-2572

12 Attorneys for The Plaintiffs

13 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

) Case No.: CV018440

)
) SPECIAL INTERROGATORIES SET NO.
) 1 DIRECTED TO DIOCESE OF
) STOCKTON

24 Propounding Party: Plaintiff, Rachel Lomas

25 Responding Party: Defendant, The Diocese of Stockton

Set No. 1

DEFINITIONS

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

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

7 The term: "You" and "Yours" means defendant "The Diocese of Stockton" which
8 includes and individual authorized to act on behalf of the defendant Diocese of Stockton,
9 including but not limited to any past or present employee of the defendant "Diocese of
10 Stockton", their agents, assigns, officers, directors, investigators, accountants, priests, nuns,
11 deacons, lay ministers, Bishops, Cardinals, Pope John Paul II, or any member of the Vatican.

12 The term: "Incident" means the accident, which is the subject matter of plaintiffs
13 complaint.

14
15 **SPECIAL INTERROGATORY NO. 1:**

16 Do you contend that Defendant Fr. Francis Arakal was acting in his course and scope as a
17 employee/agent/ of the Diocese of Stockton at the time of allegations of sexual molestation so
18 stated in the complaint by Plaintiff Rachel Lomas?

19
20 **SPECIAL INTERROGATORY NO. 2:**

21 If YOUR answer to the Special Interrogatory No. 1 is anything other than an unconditional
22 "Yes", then please state all facts, which support YOUR answer to Special Interrogatory No. 1.

1 **SPECIAL INTERROGATORY NO. 3:**

2 If YOUR answer to the Special Interrogatory NO. 1 is anything other than an unconditional
3 "Yes," then please identify all witnesses, who support YOUR answer to Special Interrogatory
4 No. 1.

5
6 **SPECIAL INTERROGATORY NO. 4:**

7 If YOUR answer to the Special Interrogatory No. 1 is anything other than an unconditional
8 "Yes", please identify all DOCUMENTS, which support YOUR answer to Special Interrogatory
9 No. 1.

10
11 **SPECIAL INTERROGATORY NO. 5:**

12 Do you contend that Defendant Fr Joseph Illo was notified by plaintiff Amber Lomas of the
13 allegations of physical contact by Fr. Francis Arakal upon plaintiff Rachel Lomas on or about
14 September 11, 2001 and as so stated in the complaint by Plaintiffs?

15
16 **SPECIAL INTERROGATORY NO. 6:**

17 If YOUR answer to the Special Interrogatory No. 5 is anything other than an unconditional
18 "Yes", then please state all facts, which support YOUR answer to Special Interrogatory No. 1.

19
20 **SPECIAL INTERROGATORY NO. 7:**

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

1 SPECIAL INTERROGATORY NO. 8:

2 If YOUR answer to the Special Interrogatory is anything other than an unconditional "Yes",
3 please identify all DOCUMENTS which support YOUR answer to Special Interrogatory No. 5.
4

5 SPECIAL INTERROGATORY NO. 9:

6 Please identify each and every Canon Law YOU have knowledge of which applies to YOUR
7 priests maintaining the confidential communication made to the priest(s) by any members of
8 YOUR diocese.
9

10 SPECIAL INTERROGATORY NO.10:

11 Please identify any and all DOCUMENTS which refer to or relate to or contain information
12 regarding the policies an procedures for sexual abuse/sexual interaction between priest and
13 minors given/distributed/and/or authored by the defendant Diocese of Stockton and given to
14 YOU in the last 10 years.
15

16 SPECIAL INTERROGATORY NO. 11.

17 Please identify, in detail, the business entity structure/title YOU are organized (i.e. corporation,
18 partnership, L.L.P. etc.) under and the legal relationship of each of the named defendants to that
19 structure (employee, officer, director, agent, independent contractor etc).
20

21 SPECIAL INTERROGATORY NO. 12:

22 Please identify with specificity, the authority structure (i.e. "chain of command") in YOUR
23 organization for each of the other named defendants.
24
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1 SPECIAL INTERROGATORY NO. 13:

2 Please identify the immediate supervisor for each of the named defendants, currently and in the
3 year 2001.
4

5 SPECIAL INTERROGATORY NO. 14:

6 Do YOU provide employee benefits (i.e. health insurance, pensions, 401K plans) to any of the
7 other named defendants.
8

9 SPECIAL INTERROGATORY NO. 15:

10 Do YOU have the authority to hire, fire, suspend and or terminate any of the other named
11 defendants in their capacity as priests and bishop acting on YOUR behalf.
12

13 SPECIAL INTERROGATORY NO. 16:

14 If you answer to the previous interrogatory is anything other than an unconditional YES, please
15 explain in detail.
16

17 SPECIAL INTERROGATORY NO. 17:

18 Do the other named defendants to this lawsuit have the authority to solicit money from
19 individuals and business entities for YOU?
20

21 SPECIAL INTERROGATORY NO. 18:

22 If YOUR answer to the previous interrogatory is anything other than an unconditional YES,
23 please explain in detail.
24
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1 SPECIAL INTERROGATORY NO. 19:

2 Do YOU have any legal or equitable ownership to the property otherwise know as St. Josephs
3 Catholic Church 1813 Oakdale Road in Modesto?
4

5 SPECIAL INTERROGATORY NO. 20:

6 Do YOU compensate monetarily or in any other manner (such as covering the living and/or
7 traveling expenses) of any of the other named defendants in this action for their and while
8 performing their duties as Priests?
9

10 Dated this 4th day of December, 2002
11



George J. MacKoul
SABBAH AND MACKOUL
Attorneys for the Plaintiffs

PROOF OF SERVICE

COMMONWEALTH OF
MASSACHUSETTS
BARNSTABLE COUNTY

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

On January 04, 2003, I served the within: **SPECIAL INTERROGATORIES SET ONE, 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.

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
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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.
RICHARD RYAN, BISHOP STEVEN
16 BLAIRE AND THE DIOCESE OF
STOCKTON

17 Defendant.
18

Case No. CV 018440

**RESPONSES TO SPECIAL
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,
26 hereby provides the following Responses to Plaintiff RACHEL LOMAS' Special Interrogatories, Set
27

28 Responses to Special Interrogatories, Set No. One

1 No. 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 SPECIAL INTERROGATORIES**

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

6 Defendant objects to this interrogatory on the grounds that it is ambiguous. Without waiving
7 that objection, Defendant does not contend that any priest is acting in the course and scope as an
8 employee or agent of the Diocese of Stockton if sexual molestation had actually taken place. Father
9 Arakal was acting in the course and scope of his agency on September 11, the date Plaintiff claims
10 the meeting took place.

11 **Response to Special Interrogatory No. 2:**

12 Sexual activity with a minor on the part of a priest is not within the course and scope of his
13 employment/agency.

14 **Response to Special Interrogatory No. 3:**

15 There are no such witnesses. This is a legal matter.

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

17 There are no such documents, this is a legal matter.

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

19 No.

20 **Response to Special Interrogatory No. 6:**

21 Father Illo was not notified of such.

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

23 There are no witnesses to prove a negative.

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

25 There are no documents to prove a negative.

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

2 Defendant objects to this interrogatory on the grounds that it seeks an opinion as to canon
3 law, 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 community
5 and a priest, that is strictly an ecclesiastical matter and is not within the jurisdiction of this court and
6 discovery of such is improper, as it seeks information protected by the religious freedom clauses of
7 the United States and California Constitutions.

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

9 Defendant objects to this interrogatory on the grounds that it is unintelligible and non-
10 sensical. Assuming that the interrogatory asks for information regarding the policies for responding
11 to sexual abuse, such items are provided with the document production herein.

12 **Response to Special Interrogatory No. 11:**

13 At the time of the events alleged herein, The Roman Catholic Bishop of Stockton, a
14 Corporation Sole. Bishop Blaire is the Bishop of the Diocese. Monsignor Ryan is the Vicar General
15 of the Diocese. Fathers Illo and Arakal have been independent contractors serving the Diocese as
16 priests.

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

18 All clergy report directly to the Bishop.

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

20 There is not a traditional "supervisor" for the named Defendants. Bishop Stephen E. Blaire
21 has oversight over each of the other parties in his position as Bishop and Ordinary of The Roman
22 Catholic Bishop of Stockton.

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

24 No.
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1 **Response to Special Interrogatory No. 15:**

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

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

7 Please see the response to the previous interrogatory.

8 **Response to Special Interrogatory No. 17:**

9 Yes.

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

11 Not applicable.

12 **Response to Special Interrogatory No. 19:**

13 No.

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

15 No.

16
17 Dated: March 13, 2003

NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION

18
19 By: 

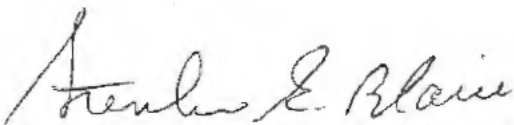
PAUL N. BALESTRACCI
Attorneys for Defendants,
FR. JOSEPH ILLO, MONSIGNOR RICHARD J.
RYAN, BISHOP STEPHEN E. BLAIRE, and
THE ROMAN CATHOLIC BISHOP OF
STOCKTON, a Corporation Sole\

VERIFICATION

1
2
3 I, STEPHEN E. BLAIRE, am the Bishop of Stockton and am the ORDINARY of THE
4 ROMAN CATHOLIC BISHOP OF STOCKTON, a corporation sole. I am authorized to make this
5 verification on its behalf. I have read the foregoing **RESPONSES TO SPECIAL**
6 **INTERROGATORIES, SET NO. ONE** and am informed and believe the matters herein to be true
7 and on that ground allege the matters stated herein are true.

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

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

11
12 
13 _____
14 STEPHEN E. BLAIRE

1 **PROOF OF SERVICE**

2 **CCP 1013a**

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

6 **RESPONSES TO SPECIAL INTERROGATORIES, SET NO. ONE**



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



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



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



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

29 **VIA FEDERAL EXPRESS**

30 George Joseph MacKoul, Esq.
31 SABBAH and MacKOUL
32 49 Locust Street
33 Falmouth, Mass 02540
34 Telephone: (508) 495-4955
35 Facsimile: (508) 495-4115
36 *(Attorneys for Plaintiffs, Kathleen Machado,
37 Rachel Lomas, and Amber Lomas)*

38 Anthony Boskovich
39 Attorney at Law
40 28 North First Street, 6th Floor
41 San Jose, CA 95113
42 Telephone: (408) 286-5150
43 Facsimile: (408) 286-5170
44 *(Co-Counsel for Plaintiffs)*

45 Michael D. Coughlan, Esq.
46 COUGHLAN & O'ROURKE LLP
47 3031 W. March Lane #210 West
48 Stockton, CA 95219
49 *(Attorneys for Defendant, Father Francis
50 Arakal)*

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

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


CARY NUNES

Exhibit C

SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

49 Locust Street

Falmouth, Massachusetts 02540

508-495-4955

Fax: 508-495-4115

E-mail: sabbahmackoul.com

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

355 West Las 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 13, 2003

Lomas et. al v. Ilo, et. al Machado

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 Special Interrogatories, Set No. 1 to Plaintiff's Special Interrogatories, set no. 1 mailed to our Falmouth office by overnight mail on March 14, 2003,

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 SPECIAL 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:

SPECIAL INTERROGATORY NO. 7:

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

Response to Special Interrogatory No. 7:

There are no witnesses to prove a negative.

Reasons Why Further Answers Should be Compelled:

Special Interrogatory number 7 seeks to discover whether or not there are any other witnesses to the alleged reporting of sexual molestation to Fr. Illo on September 11, 2001, other than Fr. Illo. Were other individuals present when the report was made to Fr. Illo? Are there any other third party witnesses to the conversations between Amber and Fr. Illo on September 11? Your answer is incomplete. We are not asking you for your interpretation with regard to burdens of proof, but are simply seeking to identify all witnesses who may have been present to the conversations between Fr. Illo and Amber, who would support your theory that no allegations of sexual misconduct were reported to Fr. Illo on September 11, as so stated in the complaint. Your answer is evasive and avoids identification of witnesses, which we are entitled to know about.

We ask that you reconsider your position and answer the request more completely.

Special Interrogatory No. 8:

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

Response to Special Interrogatory No. 8:

There are no documents to prove a negative.

Reasons Why Further Answers Should be Compelled:

Special Interrogatory number 8 seeks to discover whether or not there are any documents, i.e. reports, memos, etc., to support your answer to Special Interrogatory No. 5, that no reports of sexual misconduct were reported to Fr. Illo on September 11, 2001. Your answer is evasive and avoids identification or denial of such documents which we are entitled to know about. Counsel for defendant Arakal, has indicated in his discovery responses that you forwarded to him statements made by witnesses to the September 11 conversations. Why do you avoid identifying those documents and others in your possession.

SPECIAL INTERROGATORY NO. 9:

Please identify each and every Canon 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.

Response to Special Interrogatory No. 9:

Defendant objects to this interrogatory on the grounds that it seeks an opinion as to canon law, which is not within the jurisdiction of this court. Further, to the extent this question seeks to adjudicate anything regarding a confidential communication between a member of our community and a priest, that is strictly an ecclesiastical matter and is not within the jurisdiction of this court and discovery of such is improper, as it seeks information

protected by the religious freedom clauses of the United States and California Constitutions.

Reasons Why Further Answers Should be Compelled:

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

SPECIAL INTERROGATORY NO.10:

Please identify 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. 10:

Defendant objects to this interrogatory on the grounds that it is unintelligible and non-sensical. Assuming that the interrogatory asks for information regarding the policies for responding to sexual abuse, such items are provided with the document production herein.

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.

SPECIAL INTERROGATORY NO. 15:

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

Response to Special Interrogatory No. 15:

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

Reason Why Further Answers Should Be Compelled:

The propounding party is confused by your objection. On the one hand you assert that some of the defendants are independent contractors of the Diocese of Stockton, but then

you protest discovery of facts regarding the hiring and firing of the same. You cannot assert a legal theory to distance the Diocese from responsibility for the improper acts of its priests and then on the other hand claim that inquiry into the employment structure is protected by the first amendment. Please state your reasoning and authority to support your objections. Otherwise please make an amended and complete response to the interrogatory as stated.

SPECIAL INTERROGATORY NO. 16:

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

Response to Special Interrogatory No. 16:

Please see the response to the previous interrogatory.

Reason Why Further Answers Should Be Compelled:

This interrogatory seeks information and the justification that springs from it in the previous reasoning for compelling further answers. Further each interrogatory must be answered individually.

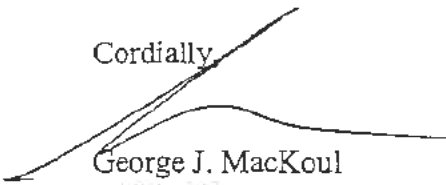
The discovery propounded and the responses requested contain important evidence necessary for the plaintiff(s) to fully and fairly evaluate their claim against your clients. Improper and unfair withholding of this information can only cause unnecessary court delays and do nothing but increase the cost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



George J. MacKoul
SABBAH & MACKOUL

GJM

Exhibit D

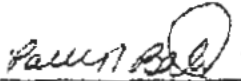
AGREEMENT TO EXTEND TIME TO MAKE MOTION TO COMPEL

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.

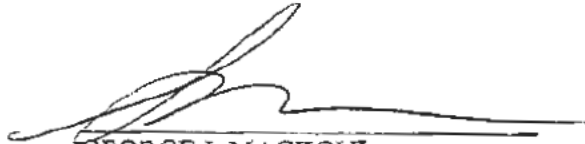
The extension can terminate with written notice by either party, and plaintiffs will have 30 days from the termination date to file motions against defendants.

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

DFE

Handwritten signature: Pamela Edwards

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 \$ 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**
) **RESPONSES TO REQUEST FOR**
) **PRODUCTION OF DOCUMENTS, SET**
) **ONE FROM DEFENDANT DIOCESE OF**
) **STOCKTON; REQUEST FOR**
) **SANCTIONS PURSUANT TO C.C.P. 2023,**
) **AGAINST DEFENDANT DIOCESE OF**
) **STOCKTON AND/OR THEIR COUNSEL,**
) **MEMORANDUM OF POINTS AND**
) **AUTHORITIES IN SUPPORT OF**
) **MOTION, DECLARATION OF GEORGE**
) **J. MACKOUL IN SUPPORT OF MOTION**
) **TO COMPEL.**

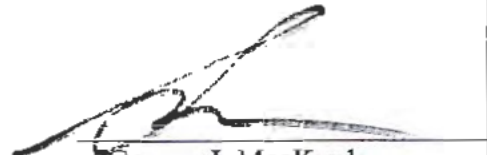
27 [Filed Concurrently with Plaintiffs
28 California Rules Of Court 335 Statement
29 Of Questions And Answers In Dispute]

30 PLEASE TAKE NOTICE THAT ON March 3, 2004 AT 9:00 A.M., in Department 41,
31 of the above captioned court, Plaintiff, Rachel Lomas will move this court for an order
32 compelling defendant the Diocese of Stockton, a sole Corporation, for further responses to

1 Request For Production Of Documents, set. No.1, propounded by plaintiff Rachel Lomas, and
2 will further move this court for an order for monetary sanctions in the amount of \$2,636.30
3 against the defendant and/their counsel for the cost of hringing this motion pursuant to the
4 attached declaration of George J. MacKoul.

5 This motion is based on this notice, the memorandum of points and authorities herein and
6 the attached, CRC 335 statement, the pleadings on file and any oral testimony presented at the
7 hearing on this motion.

8 Dated: February 6, 2004
9

10 
11 George J. MacKoul
12 SABBAH AND MACKOUL
13 Attorneys for the Plaintiffs
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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 Fr. Joseph
8 Illo and The Diocese of Stockton for defamation against the mother of the minor children in an
9 apparent cover up of the abuse and also Respondent Superior Liability against the Defendant
10 Diocese for the defamatory behavior of both priests.

11
12 On January 4, 2003 plaintiff, Rachel Lomas propounded Request for Production, Set No.
13 1 to defendant Diocese of Stockton (Exhibit A). On February 7, 2003, defendant filed verified
14 responses to the requests (Exhibit B), which contained boilerplate objections, and improper
15 responses. Thereafter all parties granted consecutive closed-ended extensions, by stipulation, to
16 file meet and confer letters and if necessary subsequent motions to compel.

17 On June 18, 2003, plaintiff's counsel wrote a meet and confer letter to defendant's
18 counsel inviting defense counsel to meet and confer on what plaintiff's counsel believed were
19 inadequate responses. Said letter is attached as Exhibit C. **As of the date of this motion the**
20 **defendant has not responded to the June 18, 2003 letter inviting defense counsel to meet**
21 **and confer on these inadequate responses and has filed no supplemental responses with the**
22 **plaintiff.**

23
24 On October 6, 2003, (after numerous prior extensions) defendant granted plaintiff an
25 **open ended extension** to file this motion to compel the discovery propounded on January 4,
2003 (Exhibit D).

1 As a Trial Setting Conference is scheduled to be held on March 3, 2004, plaintiff has no
2 choice but to seek relief from the court by way of this motion to compel.

3
4 **II.**

5 **THE MOTION FOR ORDER COMPELLING FURTHER RESPONSES "SHALL SET**
6 **FORTH SPECIFIC FACTS SHOWING GOOD CAUSE JUSTIFYING THE**
7 **DISCOVERY SOUGHT BY THE INSPECTION DEMAND."**

8
9 The moving party is required to set forth specific facts sufficient to show "good cause" so
10 as to justify an order to compel the discovery sought. *Ca Civ Pro* § 2031(m) (emphasis added);
11 *Kirkland v. Sup.Ct.* (2002) 95 Cal.App.4th 92, 98, 115 Cal.Rptr.2d 279, 284.

12 The moving party has explained in detail and set forth specific facts (in the concurrently
13 filed CRC 335 Statement and Declaration of Attorney MacKoul) as to the reason why each of the
14 requests is **relevant** to the matter before the court and necessary for trial preparation and/or to
15 prevent surprise at trial. *Glenfed Develop. Corp. v. Sup.Ct.* (National Union Fire Ins. Co. of
16 Pittsburgh, Pa.) (1997) 53 Cal.App.4th 1113, 1117, 62 Cal.Rptr.2d 195, 197 (citing text); see
17 also *Kirkland v. Sup.Ct.* (2002) 95 Cal.App.4th 92, 98, 115 Cal.Rptr.2d 279, 284 (citing text).

18
19 **III.**

20 **IF "GOOD CAUSE" IS SHOWN, THE (NON MOVING) RESPONDING PARTY MUST**
21 **JUSTIFY THE OBJECTIONS STATED IN THEIR RESPONSES.**

22
23 Once, "good cause" is established by the moving party, the burden is then on the
24 responding party to justify any objections made to document disclosure *Kirkland v. Sup.Ct.*
25 (2002) 95 Cal.App.4th 92, 98, 115 Cal.Rptr.2d 279, 284

1 The moving party's separately filed CRC 335, statement, clearly shows that no
2 substantial justification exists for the objections filed by the defendant in their responses.

3
4 **IV.**

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

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

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

BECAUSE THE DEFENDANT FILED EVASIVE RESPONSES AND OBJECTIONS,
LACKING SUBSTANTIAL JUSTIFICATION, DEFENDANT HAS "MISUSES THE
DISCOVERY PROCESS" [CA CIV PRO § 2023(A)(4)-(6)]; AND SANCTIONS ARE
APPROPRIATE FOR THE COST OF BRINGING THIS MOTION.

The Code of Civil Procedure requires that responses to a document request contain certain information. A party responding to a C.C.P. 2031 demand **must** respond separately to each requested with **one** of the following responses.

1. **An agreement to comply**

2. **A response stating an inability to comply which shall state the following**

(C.C.P. 2031 (f) (2) **emphasis added**)

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

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

-never existed; or

-has been lost or stolen; or

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

A responding party may object to any item or category demanded in whole or in part, however to be effective the objection **must** also:

*Identify With **Particularity** The Specific Document Or Documents Objected

To: **And**

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

4 “The responding party **must not simply state objections without good reason** and
5 objections should not be filed **without identification** of the documents sought to be protected; i.e.
6 a privilege log must be provided, identifying each request objected to. A blanket objection (c.g.,
7 “attorney-client privilege”) may not always be enough to preserve the point. You must furnish
8 sufficient information regarding the communication or conversation to enable a judge to rule on
9 a motion to compel; e.g., the person to whom and by whom the communication was made, the
10 date and place, nature or title of any document, etc”. *Weil and Brown, Civil Procedure Before*
11 *Trial* Chapter 8, Section 8:191.1

12 As evidenced by the moving party’s separately filed CRC 335 Statement, the responses
13 given by this defendant, do not meet the requirements of C.C.P. 2031 set forth above and contain
14 frivolous and boilerplate objections. Sanctions are therefore appropriate under C.C.P. 2023,
15 pursuant to the attached declaration of Attorney MacKoul.

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VI.
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 produce the documents requested and award the moving party sanctions in accordance with the attached declaration of Attorney MacKoul.

Dated February 6, 2004



George J. MacKoul
Attorney for Plaintiffs

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DECLARATION OF GEORGE J. MACKOUL

I George J. MacKoul declare and state:

1. I am attorney of record for all of the plaintiffs in the above captioned matter. As such, I am responsible for the day to day handling of this file. If called to testify, I would and could state from my own personal knowledge the following facts
2. Attached, as Exhibit A is a true and correct copy of Request for Production, Set Number 1, mailed by Plaintiff Rachel Lomas to Defendant Diocese of Stockton on January 4, 2003.
3. Attached, as Exhibit B is a true and correct copy of Defendants Diocese of Stockton's Responses to Request for Production Set 1, mailed to Plaintiff's counsel on March 13, 2003.
4. Attached, as Exhibit C is a true and correct copy of a letter dated from plaintiff's counsel to defense counsel, dated June 18, 2003, inviting defense counsel to meet and confer per the code of civil procedure regarding the inadequacy of the responses given by defendant and a request for supplementation.
5. Attached, as Exhibit D is a 10-6-03 stipulation/letter from defense counsel to plaintiff's counsel granting an open-ended extension of time to file this motion.
6. To date defense counsel has not meet and conferred with regard to these responses. Accordingly plaintiff's counsel has no other option but to file this motion.
7. I am requesting the following sanctions for the time it took me to prepare and file this motion.
 - a. June 13, 2003 letter inviting defendant to meet and confer including legal research and drafting time took approximately **5 hours**.

1 b. Travel to and from my Patterson, California Office to Court to argue this motion
2 and court time to appear and argue this motion I estimate to be about **3 hours**.

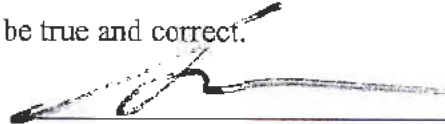
3 c. I spent approximately **5 hours** drafting this notice of motion and motion and
4 separately filed CRC 335 Statement.

5 8. My average billable hourly rate is \$200.00 per hour as this is the rate and therefore I am
6 asking the court to award me 13 hours of time or (13 x \$200.00 plus filing fee for this
7 motion of \$36.30) or **\$2,636.30** be awarded to plaintiff's counsel for the cost of bringing
8 this motion.

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

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

14 Date: February 6, 2004



15 George J. MacKoul
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Exhibit A

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

5 Anthony Boskovich
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7 Phone: 408-286-5150
8 Fax: 408-286-5170

9 Attorneys for the Plaintiffs

10 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

14)
15 vs.)

16 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr.)
Francis Arakal, Fr. Richard Ryan, Bishop)
17 Steven Blaire and The Diocese of Stockton)
and Docs 1-100,)
18 Defendants)

) Case No.: CV018440

) **REQUEST FOR PRODUCTION OF**
) **DOCUMENTS**

19)
20 Propounding Party: **Plaintiff, Rachel Lomas**

21 Responding Party: **Defendant, Diocese of Stockton**

22 **Set No. 1.**

23 Pursuant to C.C.P. 2031, Plaintiff Rachel Lomas, by and through her Guardian Ad Litem,
24 request that Defendant Diocese of Stockton produce for inspection and copying the following
25 documents at the Law Office of SABBAH AND MACKOUL 49 Locust Street Falmouth,

1 Massachusetts 02540 and provide written responses under oath in the time period prescribed by
2 C.C.P. 2031.

3 PLEASE TAKE NOTICE THAT AT THE TIME AND PLACE designated for
4 production stated above, Plaintiff Rachel Lomas, by and through her Guardian Ad Litem
5 Kathleen Machado, that the Responding Party listed above, produce for inspection and copying
6 all of the originals (if the originals do not exist) of the documents identified below pursuant to
7 C.C.P. 2031.

8 In response to this Request for Production of Documents, you should furnish any
9 documents which is available to you, not merely those which you now have in your possession.
10 This means that you are to furnish documents which are in the possession of your agents,
11 employees, attorneys, investigator's for your attorneys, or which are otherwise subject to your
12 custody or control.

13 All documents shall be produced in the form in which they were found in their normal
14 filing places, including the file folder or other binding in which such documents where found.
15 You are also required to produce copies of any documents in which there appear markings not
16 on the original.

17 **DEFINITIONS**

18 The words in quotes in this "Definitions" section regardless of how they appear in the
19 actual requests below should be taken to be defined as follows, when answering these requests:

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

1 The term: "You" and "Yours" means defendant "The Diocese of Stockton" which
2 includes and individual authorized to act on behalf of the defendant Diocese of Stockton,
3 including but not limited to any past or present employee of the defendant "Diocese of
4 Stockton", their agents, assigns, officers, directors, investigators, accountants, priests, nuns,
5 deacons, lay ministers, Bishops and Cardinals. The term: "INCIDENT" means the accident,
6 which is the subject matter of plaintiffs complaint.

7 "Correspondence" or "Communication" and/or "Communications" is defined as all
8 written and oral communications with any human being, including face to face conversations,
9 conferences, telephone conversations, letters, telegrams, or electronic messages.

10 The term "The INCIDENT" or "INCIDENT" refers to the factual/narrative allegations
11 stated in plaintiffs' complaint.

12
13 **REQUEST FOR PRODUCTION NO. 1**

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

16
17 **REQUEST FOR PRODUCTION NO. 2**

18 All documents referring to or relating to YOUR policies and procedures for the prevention of
19 sexual misconduct with regard to minors in YOUR possession, custody and control, prior to July
20 1, 2001.

21
22 **REQUEST FOR PRODUCTION NO. 3**

23 All documents referring to or relating to educational, instructional, and/or training materials
24 authorized by YOU regarding the prevention of sexual misconduct to minors in YOUR
25 possession, custody and control, prior to July 1, 2001.

1 **REQUEST FOR PRODUCTION NO. 4**

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

5
6 **REQUEST FOR PRODUCTION NO. 5**

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

10
11 **REQUEST FOR PRODUCTION NO. 6**

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

14
15 **REQUEST FOR PRODUCTION NO. 7**

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

18
19 **REQUEST FOR PRODUCTION NO. 8:**

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

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

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

7
8 **REQUEST FOR PRODUCTION NO. 10:**

9 All documents including any communications between YOU and Fr. Harmon Skillen regarding
10 the INCIDENT.

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

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

16
17 **REQUEST FOR PRODUCTION NO. 12:**

18 The declarations page of any policy of insurance in effect at the time of the INCIDENT which
19 provided coverage for the responding party, regarding the INCIDENT. (This request is not
20 protected by any applicable privilege and defendants must include in their response the
21 identity of the carrier and the nature and limits of the coverage pursuant to *California Civil*
22 *Procedure section 2017(b)*).

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

2 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to any statements, whether
3 written, oral, recorded or unrecorded, transcribed, summarized, or noted, which were made by a
4 party relating to the INCIDENT.
5

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

7 Any and all DOCUMENTS, that pertain to, reflect,
8 refer, or relate to any statements, whether written, oral, recorded or unrecorded, transcribed,
9 summarized, or noted, which were made by any witnesses to the INCIDENT.
10

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

13 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
14 PLAINTIFF'S FORM INTERROGATORIES, SET ONE, interrogatory number 2.6.
15

16 **REQUEST FOR PRODUCTION NO. 16:**

17 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
18 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 4.1.
19
20
21
22
23
24
25

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

2 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
3 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.1.
4

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

6 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
7 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.2.
8

9
10 **REQUEST FOR PRODUCTION NO. 19:**

11 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
12 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.3.
13

14 **REQUEST FOR PRODUCTION NO. 20:**

15 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
16 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.5.
17

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

19 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
20 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.6.
21
22
23
24
25

1 **REQUEST FOR PRODUCTION NO. 22:**

2 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
3 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 12.7
4

5 **REQUEST FOR PRODUCTION NO. 23:**

6 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
7 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 13.1.
8

9 **REQUEST FOR PRODUCTION NO. 24:**

10 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
11 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 13.2.
12

13 **REQUEST FOR PRODUCTION NO. 25:**

14 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
15 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 13.2.
16

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

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 14.1.
20

21 **REQUEST FOR PRODUCTION NO. 27:**

22 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
23 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 14.2.
24
25

1
2 **REQUEST FOR PRODUCTION NO. 28:**

3 Any and all DOCUMENTS, that pertain to, reflect, refer, or relate to YOUR responses to
4 PLAINTIFF'S FORM INTERROGATORIES , SET ONE, interrogatory number 15.1.
5

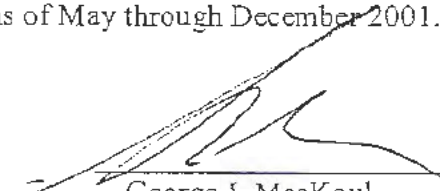
6 **REQUEST FOR PRODUCTION NO. 29:**

7 All documents including any communications between YOU and Sister Barbara regarding the
8 INCIDENT.
9

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

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

15 Dated this 4th day of January, 2003

16 
17 George J. MacKoul
18 SABBAH AND MACKOUL
19 Attorneys for the Plaintiffs
20
21
22
23
24
25

PROOF OF SERVICE

COMMONWEALTH OF
MASSACHUSETTS
BARNSTABLE COUNTY

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

On January 04, 2003, I served the within: **REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE PROPOUNDED BY PLAINTIFF RACHEL LOMAS 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)
2 NEUMILLER & BEARDSLEE
3 A PROFESSIONAL CORPORATION
4 Post Office Box 20
5 Stockton, CA 95201-3020
6 Telephone: (209) 948-8200
7 Facsimile: (209) 948-4910

8 Attorneys for Defendants,
9 FR. JOSEPH ILLO, MONSIGNOR RICHARD J. RYAN,
10 BISHOP STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC
11 BISHOP OF STOCKTON, a Corporation Sole

12 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
13 STOCKTON BRANCH

14 KATHLEEN MACHADO as an individual and)
15 as Guardian Ad Litem for RACHEL LOMAS)
16 and AMBER LOMAS)

17 Plaintiff,

18 vs.

19 FR. JOSEPH ILLO, FR. FRANCIS JOSEPH,)
20 a.k.a. FR. FRANCIS ARAKAL, FR.)
21 RICHARD RYAN, BISHOP STEVEN)
22 BLAIRE AND THE DIOCESE OF)
23 STOCKTON)

24 Defendant.

Case No. CV 018440

**RESPONSES TO REQUEST FOR
PRODUCTION OF DOCUMENTS, SET
NO. ONE**

25 PROPOUNDING PARTY: RACHEL LOMAS

26 RESPONDING PARTY: Defendant, THE ROMAN CATHOLIC BISHOP OF
27 STOCKTON, a Corporation Sole

28 SET NO.: ONE

Defendant THE ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation Sole,
hereby provides the following Responses to Plaintiff RACHEL LOMAS' Request for Production of

Responses to Request for Production of Documents, Set No. One

1 Documents, Set No. One. These responses are given while discovery is still in progress and without
2 prejudice to amending the responses based upon things discovered at a later date, or omitted from
3 these responses as a result of good faith oversight.

4 **RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS**

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

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

10 **Response to Request No. 2:**

11 These will be provided.

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

13 These will be provided.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 ///

25 ///

26 ///

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

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

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

6 This will be provided.

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

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

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

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

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

16 No such interrogatory was asked.

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

18 These documents are included.

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

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

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

25 Defendant objects to this interrogatory request on the grounds that it seeks information
26 protected by the attorney-client privilege, the attorney-work product doctrine and the joint defense
27

1 privilege. It seeks to obtain discovery of the witnesses defendant intends to prepare for or call at
2 trial, which is not discoverable.

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

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

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

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

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

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

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

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

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

24 There are no such documents.

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

26 There are no such documents.

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

2 Objection. Asked and answered.

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

4 There are no such documents.

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

6 There are no such documents.

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

8 Not applicable.

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

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

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

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

17
18 Dated: March 13, 2003

NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION

19
20 By: *Paul N. Balestracci*
21 PAUL N. BALESTRACCI
22 Attorneys for Defendants,
23 FR. JOSEPH ILLO, MONSIGNOR RICHARD J.
24 RYAN, BISHOP STEPHEN E. BLAIRE, and
25 THE ROMAN CATHOLIC BISHOP OF
26 STOCKTON, a Corporation Sole
27

1 VERIFICATION

2
3 I, STEPHEN E. BLAIRE, am the Bishop of Stockton and am the ORDINARY of THE
4 ROMAN CATHOLIC BISHOP OF STOCKTON, a corporation sole. I am authorized to make this
5 verification on its behalf. I have read the foregoing **RESPONSES TO REQUEST FOR**
6 **PRODUCTION OF DOCUMENTS, SET NO. ONE** and am informed and believe the matters
7 herein to be true and on that ground allege the matters stated herein are true.

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

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

11
12 
13 STEPHEN E. BLAIRE

1 **PROOF OF SERVICE**

2 **CCP 1013a**

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

6 **RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET NO. ONE**

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

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

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

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

26 **VIA FEDERAL EXPRESS**

27 George Joseph MacKoul, Esq.
28 SABBAA 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)*

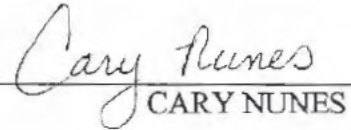
Michael D. Coughlan, Esq.
COUGHLAN & O'ROURKE LLP
3031 W. March Lane #210 West
Stockton, CA 95219

*(Attorneys for Defendant, Father Francis
Arakal)*

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)

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

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

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CARY NUNES

Exhibit C

SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

49 Locust Street

Falmouth, Massachusetts 02540

508-495-4955

Fax: 508-495-4115

E-mail: sabbahmackoul.com

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

355 West Las 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 18, 2003

Lomas et. al v. Ilo, 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

This is a request to meet and confer with regard to your clients responses to the following discovery:

1. Diocese of Stockton's responses to our client's Request for Production of Documents set no. 1.

Please allow this letter to serve as an invitation to meet and confer with regard to the responses given Pursuant to *Code Of Civil Procedure Section 2031*.

Standards of professionalism govern production of documents in civil discovery in California. A responding party must not hide the behind frivolous objections in order to avoid disclosure of the documents requested. "In responding to document demands, counsel should not strain to interpret the request in an artificially restrictive manner in order to avoid disclosure" and "Documents should only be withheld on the grounds of privilege only where appropriate". (See *Weil and Brown, Civil Procedure Before Trial*,

supra at 8:1476.5 citing local court rules as an example of the level of professionalism that must be shown by a party in answering the production request of an adverse party).

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

1. An agreement to comply

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

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

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

-never existed; or

-has been lost or stolen; or

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

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

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

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

The responding party must not simply state objections without good reason and objections **should not be filed without identification of the documents sought to be protected; i.e. a privilege log must be provided, identifying each request objected to.**

"Blanket objections (e.g., "all documents sought are irrelevant and immaterial") are ineffective and likely to result in waiver of any valid ground for objection, plus sanctions for failure to make discovery".

“Avoid raising the “burdensome and oppressive” objection unless the facts are truly unusual (e.g., very fragile property which could be damaged by any movement, touching, etc.). If you are going to object in such a case, state the reasons for your objection and offer to permit whatever inspection can be allowed under the circumstances”. See Weil and Brown, *Civil Procedure Before Trial* (2003) Chapter 8, Section 1476.

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

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

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.

Response to Request No. 1:

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

Reason Why Further Responses Should be Compelled:

This information is relevant to whether or not the Diocese had any prior notice of any sexual misconduct on the part of the Defendant Arakal. It is relevant to prove notice and negligence on the part of the Diocese. There is no case law stated to support the privacy objection, and plaintiff’s would be amenable to an in camera inspection of the documents by the court. How is this request “overbroad” and/or “Burdensome”. Propounding party is only attempting to gather evidence to prove their case. Your “harassment” objection is without justification. The propounding party only seeks to understand procedure by which the defendants handle sexual abuse claims. Further there is case law in California, which holds that the Diocese as a Corporation does not have a right to privacy. See, *Roberts v. Gulf Oil Corp.* (1983) 147 Cal.App.3d 770, 793, 195 Cal.Rptr. 393, 408.

REQUEST FOR PRODUCTION NO. 4

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

Response to Request No. 4:

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

Reasons Why Further Responses Should Be Compelled:

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. It is clearly relevant to show that the Diocese had notice of Fr. Illo's defamatory behavior towards plaintiffs and others and the lack of any discipline or rehabilitation taken on the part of the Diocese to correct said behavior. It is relevant to prove respondent superior liability. The privacy protection is a limited protection which can be overcome in this matter. Third party personnel records are protected from discovery "unless the litigant can show a compelling need for the particular documents and that the information cannot reasonably be obtained through depositions or from nonconfidential sources." *Harding Lawson Associates v. Sup.Ct. (Bailey)* (1992) 10 Cal.App.4th 7, 10, 12 Cal.Rptr.2d 538, 539 (emphasis added). Plaintiff's anticipate that defendants will limit the testimony of the Diocese Priest regarding prior notice of defamation under the religious freedom clause and there are no other non confidential resources to gather this information. Therefore there is a compelling need for production of Fr. Illo's personal file. The propounding party suggests an in camera inspection of said documents to avoid law and motion.

REQUEST FOR PRODUCTION NO. 6

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

Response to Request No. 6:

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

Reason Why Further Answers Should Be Compelled:

The objection is boilerplate. Boilerplate objections have been held to be sanctionable. See: *Korea Data Systems Co. Ltd. v. Sup.Ct. (Amazing Technologies Corp.)* (1997) 51 Cal.App.4th 1513, 1516, 59 Cal.Rptr.2d 925, 926. The request is certainly not overbroad, and is not burdensome. The request seeks to obtain information to prove notice on the part of the Diocese of Stockton with regard to prior illegal acts by one of its priests. The religious freedom objection is without legal authority as no authority to support this

objection was cited in the response. The Privacy objection can be overcome as the propounding party has a compelling interest in obtaining the documents requested and there are no other means by which the information sought to be produced can be obtained.

REQUEST FOR PRODUCTION NO. 7

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

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:

Your objections must contain a privilege log identifying each and every document, which you seek 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, propounding party requests that a privilege log be provided as to each and every document you claimed to fall under the attorney client privilege. "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. Nor can an attorney later "by retroactive adoption convert the independent work of another, already performed, into his own." *Jasper Construction, Inc. v. Foothill Junior College Dist.* (1979) 91 Cal.App.3d 1, 16, 153 Cal.Rptr. 767, 776. Any cononical investigation done by the Diocese cannot be later converted into work product. 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).

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.

Reason Why Further Responses Should be Compelled:

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). Can you direct me to authority to support this objection? Your objections are without merit and all other objections are hereby waived.

REQUEST FOR PRODUCTION NO. 9:

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

Response to Request No. 9:

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, as it is not subject to the jurisdiction of the court.

Reason Why Further Responses Should be Compelled:

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). Can you direct me to authority to support this objection? Your objections are without merit and all other objections are hereby waived.

REQUEST FOR PRODUCTION NO. 10:

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

Response to Request No. 10:

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

Reason Why Further Responses Should be Compelled:

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). All other objections have been waived.

REQUEST FOR PRODUCTION NO. 11:

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

Response to Request No. 11:

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

Reason Why Further Responses Should be Compelled:

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). All other objections have been waived.

REQUEST FOR PRODUCTION NO. 13:

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

Response to Request No. 13:

Defendant objects to this request on the grounds that it seeks information protected by both the 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.

Reason Why Further Responses Should be Compelled:

No privilege log was provided to substantiate the attorney client privilege. In response to a motion to compel answers, the burden is on the party claiming a privilege to establish whatever preliminary facts are essential to the claim. See Ca Evid §§ 402, 405. The privilege applies only to confidential communications between lawyer and client. As the allegations in the complaint allege a criminal act, the "crime-fraud" exception applies to the attorney-client privilege with regard to any statements regarding the molestation of minors. See, *BP Alaska Exploration v. Sup.Ct. (Nahama)*, supra, 199 Cal.App.3d at 1262, 245 Cal.Rptr. at 697. Further, there is no protection for conversations in the presence of others whose presence was not essential to further the client's interests. Ca Evid § 952, 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 evidentiary in character. These are not protected even if a lot of attorney "work" may have gone into locating and identifying them. See *Mack v. Sup.Ct. (State of Calif.)* (1968) 259 Cal.App.2d 7, 10, 66 Cal.Rptr. 280, 28. Further plaintiff's would like an in camera inspection of the documents sought to be protected. Responding party's objection is so broad that it is difficult to see how all communications between the parties' fall under each category of the privileges as so stated. This request includes witnesses statements which fall outside the privileges stated and not all witnesses statements are privileged. The *Nacht* case which your response (regarding trial strategy and revealing which witnesses were interviewed) is supported by also states the following: Statements independently prepared by witnesses are not "work product" because they do not reflect counsel's evaluation or impressions of the case. Such statements cannot be protected from discovery by turning them over to counsel. *Nacht & Lewis Architects, Inc. v. Sup.Ct. (McCormick)* (1996) 47 Cal.App.4th 214, 219, 54 Cal.Rptr.2d 575, 577, fn. 2]

REQUEST FOR PRODUCTION NO. 14:

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

Response to Request No. 14:

Defendant objects to this request on the grounds that it seeks information protected by both the 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:

Same rational as stated in Response to your Response to No. 13.

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:

Same rational as stated in Response to your Response to No. 13. In addition with regard to defendants response to produce documents with reference to documents identified in

the defendants 12.1 form interrogatory: A list of potential witnesses whom counsel has interviewed is protectible as qualified work product. Such list "necessarily reflect(s) counsel's evaluation of the case by revealing which witnesses or persons . . . counsel deemed important enough to interview." *Nacht & Lewis Architects, Inc. v. Sup.Ct. (McCormick)* (1996) 47 Cal.App.4th 214, 217, 54 Cal.Rptr.2d 575, 576 2. However, a list of persons who have turned over to counsel statements written or recorded independently by them is not protected as work product. Such a list has no tendency to reveal counsel's evaluation of the case. *Nacht & Lewis Architects, Inc. v. Sup.Ct. (McCormick)*, supra, 47 Cal.App.4th at 217-218, 54 Cal.Rptr.2d at 577; Statements independently prepared by witnesses are not "work product" because they do not reflect counsel's evaluation or impressions of the case. Such statements cannot be protected from discovery by turning them over to counsel. *Nacht & Lewis Architects, Inc. v. Sup.Ct. (McCormick)* (1996) 47 Cal.App.4th 214, 219, 54 Cal.Rptr.2d 575, 577, fn. 2 Likewise, statements made (verbally, in writing or in recordings) by a witness to interviewing counsel are usually "evidentiary" (nonderivative) in nature, and hence discoverable. *Kadelbach v. Amaral* (1973) 31 Cal.App.3d 814, 823, 107 Cal.Rptr. 720, 725. As the responding defendant will not identify which statements taken from which witnesses qualify for work product protection, the plaintiffs challenge the validity of this blanket, boilerplate objection.

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:

Same reasons and rational stated in No. 17.

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.

Reason Why Further Answers Should Be Compelled:

Same reasons and rational stated in No. 17.

Response to Request No. 29:

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

Reason Why Further Answers Should Be Compelled:

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). All other objections have been waived.

REQUEST FOR PRODUCTION NO. 30:

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

Response to Request No. 30:

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

Reason Why Further Answers Should Be Compelled:

The question is relevant as our investigation has revealed that Fr. Arakal, calls little girls at home when their parents are not around. It is relevant to prove our case. What authority do you have to support your objection?

We would appreciate a response to the concerns addressed in this letter. As you know we have only until July 7, 2003 to file a motion to compel further answers to this discovery. If you need more time to study this letter, we would be happy to accommodate you in this regard if you would extend our time period for filing of our motion. Otherwise I would expect a response to this letter as soon as possible. Should you choose to supplement these responses we would need to also know so as soon as possible.

We want to avoid having to go to court to resolve this discovery dispute. However, if necessary we will file our motion with the court and ask for all appropriate costs and sanctions should your not make a reasonable and good faith attempt to comply with our request to meet and confer with respect to the contents of this letter.

I look forward to your response.

Regards,

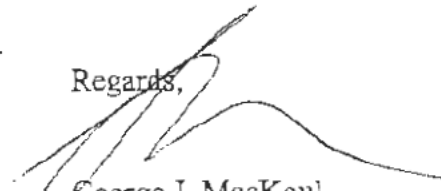

George J. MacKoul
Sabbah & MacKoul

Exhibit D

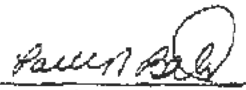
AGREEMENT TO EXTEND TIME TO MAKE MOTION TO COMPEL

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

2 OF 4

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 RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS, SET ONE FROM DEFENDANT DIOCESE OF STOCKTON; REQUEST FOR SANCTIONS PURSUANT TO C.C.P. 2023, AGAINST DEFENDANT DIOCESE OF STOCKTON AND/OR THEIR COUNSEL, 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
Neumiller & Beardslee
509 West Weber Avenue
Fifth Floor
Stockton, California 95203
(209) 948-8200
209-948-4910

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

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

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

Executed on February 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

PG
D
Danielle Edwards

5 Anthony Boskovich (Bar No. 121198)
6 LAW OFFICES OF ANTHONY BOSKOVICH
7 28 North First Street 6th Floor
8 San Jose, California 95113-1210
9 Phone: 408-286-5150
10 Fax: 408-286-5170

11 Attorneys for the Plaintiffs

12 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

13 \$ 36.30 - 200402098020

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

) Case No.: CV018440
)
) **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.**

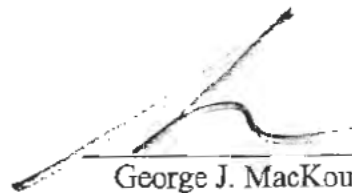
24 [Filed Concurrently with Separate
25 Statement Of Questions and Answers in
Dispute, Pursuant to California Rule of
Court 335]

26 YOU ARE HEREBY NOTIFIED THAT at 9 a.m. on March 3, 2004 or as soon
27 thereafter as the matter can be heard, in Department 41 of this Court, Plaintiff will move this
28 Court for an order compelling defendant Fr. Joseph Illo to furnish further responses to the

1 Special 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 pay a monetary sanction
4 to moving party in the sum of **\$936.30** for the reasonable expenses and attorney's fees incurred
5 by the moving party in connection with this proceeding. This motion will be made on the
6 grounds that the defendants responses to the Special interrogatories are relevant to the subject
7 matter of this action, and do not relate to privileged matters, and that the said defendant's refusal
8 to properly and thoroughly answer same is without substantial justification.

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

11
12 Dated: February 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 Fr.
7 Joseph Illo. The balance of the allegations stated in the complaint are against Defendant Illo and
8 Defendant Arakal for defamation against the mother of the minor children in an apparent cover
9 up of the abuse and also Respondent Superior Liability against the Defendant Diocese for the
10 defamatory behavior of both priests.

11 On January 6, 2003 plaintiff, Rachel Lomas propounded Special Interrogatories, Set No.
12 1, on defendant Fr. Joseph Illo (Exhibit A)

13 On March 13, 2003, defendant Fr. Joseph Illo filed responses to the Special
14 interrogatories (Exhibit B).

15 On June 6, 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 Special 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 6, 2003 letter. Therefore, plaintiff was left with no choice but to file this
22 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 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 Special Interrogatories are relevant to either the discovery of admissible evidence at trial, or relate directly to the issues alleged in plaintiff's complaint, or defendant's answer.

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

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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. “**Parties 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
9 **IV.**

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

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 as required, pay the reasonable, expenses, **including attorney's fees,**
2 incurred 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.

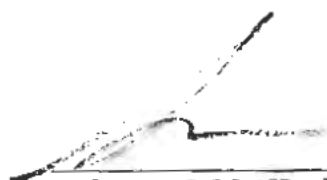
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VII.

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, Fr. Joseph Ilo to supplement their responses to Special 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

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DECLARATION OF GEORGE J. MACKOUL

I George J. MacKoul declare and state:

1. I am attorney of record for all of the plaintiffs in the above captioned matter. As such, I am responsible for the day to day handling of this file. If called to testify, I would and could state from my own personal knowledge the following facts
2. Attached, as Exhibit A is a true and correct copy of Special Interrogatories, Set Number 1, mailed by Plaintiff Rachel Lomas to Defendant Fr. Joseph Illo on January 6, 2003.
3. Attached, as Exhibit B is a true and correct copy of Defendants Fr. Joseph Illo's Responses to Special Interrogatories Set 1, mailed to Plaintiff's counsel on March 13, 2003.
4. Attached, as Exhibit C is a true and correct copy of a letter dated from plaintiff's counsel to defense counsel, dated June 6, 2003, inviting defense counsel to meet and confer per the code of civil procedure regarding the inadequacy of the responses given by defendant and a request for supplementation.
5. Attached, as Exhibit D is a 10-6-03 stipulation/letter from defense counsel to plaintiff's counsel granting an open-ended extension of time to file this motion.
6. To date defense counsel has not met and conferred with regard to these responses. Accordingly plaintiff's counsel has no other option but to file this motion.
7. I am requesting the following sanctions for the time it took me to prepare and file this motion.
 - a. June 6, 2003 letter inviting defendant to meet and confer including legal research and drafting time took approximately 4 hours.

EXHIBIT A

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

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

14 Attorneys for The Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 Kathleen Machado as an individual and as) Case No.: CV018440
17 Guardian ad Litem for, Rachel Lomas and)
18 Amber Lomas,) SPECIAL INTERROGATORIES SET NO.
19 Plaintiffs,) 1 DIRECTED TO DEFENDANT FR.
20 vs.) JOSEPH ILLO
21)
22)
23 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr.)
24 Francis Arakal, Fr. Richard Ryan, Bishop)
25 Steven Blaire and The Diocese of Stockton)
and Does 1-100,)
Defendants)
)

26 Propounding Party: Plaintiff, Rachel Lomas

27 Responding Party: Defendant, Fr. Joseph Illo

28 Set No. 1.

29 **DEFINITIONS**

30 The term: "Documents" as used in this request means all documents as defined by
31 California Evidence Code Section 250. The term documents also includes any information

1 maintained by electronic means, including but not limited to those maintained on a computer
2 (either personal or network based) or any other electronic device which stores information and
3 further includes e-mail messages, storage components otherwise known as "cookies", palm
4 pilots, laptop computers, voice mail messages,

5 The term: "You" and "Yours" means the above identified responding party to this
6 discovery which includes and individual authorized to act on behalf of the responding party, their
7 agents, assigns, officers, directors, investigators, accountants, priests, nuns, deacons, lay
8 ministers, Bishops, Cardinals, Pope John Paul II, or any member of the Vatican.

9 The term "INCIDENT" means the accident, which is the subject matter of plaintiffs'
10 complaint.

11

12 **SPECIAL INTERROGATORY NO. 1:**

13 YOUR personal and professional telephone numbers used by YOU during the calendar year
14 2001.

15

16 **SPECIAL INTERROGATORY NO. 2:**

17 Please identify all of YOUR personal and/or professional e-mail addresses for the years 1999-the
18 present.

19 **SPECIAL INTERROGATORY NO. 3:**

20 The name and address of all internet providers YOU were subscribed to in the for the years
21 1999-present.

22 **SPECIAL INTERROGATORY NO. 4:**

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

25

1 **SPECIAL INTERROGATORY NO. 5:**

2 Please identify the name, address and telephone number of the each and every
3 psychologist/psychiatrist who has knowledge of the INCIDENT.
4

5 **SPECIAL INTERROGATORY NO. 6:**

6 Please identify the name, address and telephone number of each and every witness who had
7 contact with plaintiff Amber Lomas on about September 11, 2001 when she communicated to
8 YOU her concerns/complaints about defendant Arakal.
9

10 **SPECIAL INTERROGATORY NO. 7:**

11 Please identify each and every document exchanged between YOU and any of the other named
12 defendants regarding the INCIDENT.
13

14 **SPECIAL INTERROGATORY NO. 8:**

15 Please state your Social Security Number.
16

17 **SPECIAL INTERROGATORY NO. 9:**

18 Please identify each and every written correspondence YOU have in YOUR possession directed
19 to plaintiff Machado. This includes and is not limited to copies of e-mail messages.
20

21 **SPECIAL INTERROGATORY NO. 10:**

22 Please identify all documents YOU received, from the defendant Diocese of Stockton, since
23 YOUR ordination as a priest, regarding and/or referring to the prevention and/or protection of
24 minors from sexual misconduct by Catholic Priests.
25

1 **SPECIAL INTERROGATORY NO. 11:**

2 Please identify each and every organization, group, and/or youth group, whose membership
3 consisted of minors that YOU participated in over the last 5 years.
4

5 **SPECIAL INTERROGATORY NO. 12:**

6 Please identify each member of YOUR staff, by name address and telephone number, who
7 currently work for YOU at St. Josephs Church in Modesto.
8

9 **SPECIAL INTERROGATORY NO. 14:**

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

13 **SPECIAL INTERROGATORY NO. 15:**

14 Please identify each and every Catholic Parish YOU have been a residence at for the past 10
15 years.
16

17 **SPECIAL INTERROGATORY NO. 16:**

18 Please identify the name address and telephone number of the seminary YOU attended when
19 YOU trained for YOUR current occupation as a Catholic Priest.
20

21 **SPECIAL INTERROGATORY NO. 17:**

22 Please identify the name address and telephone number of each and every supervisor YOU have
23 had in YOUR capacity as a Catholic Priest for the past 10 Years.
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SPECIAL INTERROGATORY NO. 18:

Please identify each and every personal asset YOU own which is not otherwise owned by the defendant Diocese of Stockton. This interrogatory is specifically looking for information about YOUR personal assets, meaning all bank accounts, property, stocks, and any other tangible asset that could be used to satisfy a judgment in this action should one be rendered against YOU.

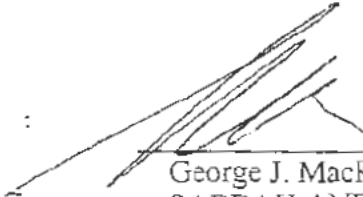
SPECIAL INTERROGATORY NO. 19:

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.

SPECIAL INTERROGATORY NO. 20:

Please identify each and every individual (by name address and telephone number) YOU have communicated with since July of 2001 about the allegations stated in the complaint against YOU and defendant Arakal.

Dated this 4th day of January, 2003


George J. MacKoul
SABBAH AND MACKOUL
Attorneys for the Plaintiffs.

PROOF OF SERVICE

COMMONWEALTH OF
MASSACHUSETTS
BARNSTABLE COUNTY

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

On January 4th, 2003, I served the within: **SPECIAL INTERROGATORIES SET ONE, TO DEFENDANT JOSEPH ILLO.**

_____ 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.

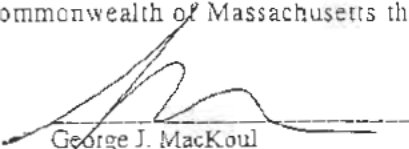

George J. MacKoul

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.)
RICHARD RYAN, BISHOP STEVEN)
16 BLAIRE AND THE DIOCESE OF)
STOCKTON)

17 Defendant.
18

Case No. CV 018440

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

19
20 PROPOUNDING PARTY: RACHEL LOMAS

21 RESPONDING PARTY: Defendant, FATHER JOSEPH ILLO

22 SET NO.: ONE

23 Defendant FATHER JOSEPH ILLO hereby provides the following Responses to Plaintiff
24 RACHEL LOMAS' Special Interrogatories, Set No. One. These responses are given while
25 discovery is still in progress and without prejudice to amending the responses based upon things
26 discovered at a later date, or omitted from these responses as a result of good faith oversight.
27

28 Responses to Special Interrogatories, Set No. One

1 Joseph, Mary Mullins, Owen Kummerle, Jackie Tucker, Rosario Hernandez, Yvonne McGloughlin,
2 Rose Wyeth, and Kathleen Machado.

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

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

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

7 187-52-4469.

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

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

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

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

16 **Response to Special Interrogatory No. 11:**

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

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

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

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

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

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

8 St. Joseph's, Modesto. Cathedral of the Annunciation, Stockton. St. Anthony's, Hughson.
9 St. Anthony's, Manteca.

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

11 St. Joseph's Seminary, Yonkers, New York.

12 **Response to Special Interrogatory No. 17:**

13 I do not technically have a traditional "supervisor," but I reported to Bishop Donald W.
14 Montrose, retired. Bishop Stephen E. Blaire, 1105 N. Lincoln Street, Stockton, CA, (209) 466-0636.

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

16 Defendant objects to this interrogatory on the grounds that such discovery is improper
17 pursuant to Civil Code § 3295(a).

18 **Response to Special Interrogatory No. 19:**

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

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

23 Defendant objects to this interrogatory on the grounds that it seeks information protected by
24 the attorney-client privilege, attorney work product doctrine, and joint defense privilege. It also
25 seeks information regarding a canonical investigation which is not within the jurisdiction of this
26 court and thus constitutes information which is neither relevant nor calculated to lead to the
27

1 discovery of admissible evidence outside of the canonical investigation and privileged conversations.
2 I have discussed the matter with Mary Mullins and Owen Kummerle. I do not specifically recall
3 discussing the allegations with other persons.

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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1 VERIFICATION

2 I, FATHER JOSEPH ILLO am a Defendant in the above-entitled action. I have read the
3 foregoing **RESPONSES TO SPECIAL INTERROGATORIES, SET NO. ONE** and know the
4 contents thereof. The same is true of my own knowledge, except as to those matters which are
5 therein alleged on information and belief, and as to those matters, I believe them to be true.
6

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

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

10 
11 _____
12 FATHER JOSEPH ILLO

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 SPECIAL 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)*

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

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


CARY NUNES

EXHIBIT C

SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION

ATTORNEYS AND COUNSELORS AT LAW

49 Locust Street

Falmouth, Massachusetts 02540

508-495-4955

Fax: 508-495-4115

E-mail: sabbahmackoul.com

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

355 West Las 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 6, 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 Fr. Joseph Illo to Plaintiff's Special 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, Fr. Illo 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 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, FR. JOSEPH ILLO'S RESPONSES TO SPECIAL 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:

SPECIAL INTERROGATORY NO. 1:

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

Response to Special Interrogatory No. 1:

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

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.

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

SPECIAL INTERROGATORY NO. 2:

Please identify all of YOUR personal and/or professional e-mail addresses for the years 1999-the present.

Response to Special Interrogatory No. 2:

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

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.

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

SPECIAL INTERROGATORY NO. 3:

The name and address of all internet providers YOU were subscribed to in the for the years 1999-present.

Response to Special Interrogatory No. 3:

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

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.

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

SPECIAL INTERROGATORY NO. 4:

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

Response to Special Interrogatory No. 4:

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

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.

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

SPECIAL INTERROGATORY NO. 6:

Please identify the name, address and telephone number of each and every witness who had 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 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. Further, the answer to the interrogatory is incomplete. Responding party has a duty to provide a complete response, including the name address and telephone number of each and every witness stated.

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

SPECIAL INTERROGATORY NO. 7:

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

Response to Special Interrogatory No. 7:

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

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.

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

SPECIAL INTERROGATORY NO. 9:

Please identify each and every written correspondence YOU have in YOUR possession directed to plaintiff Machado. This includes and is not limited to copies of e-mail messages.

Response to Special Interrogatory No. 9:

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

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.

Further, 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.

SPECIAL INTERROGATORY NO. 10:

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

Response to Special Interrogatory No. 10:

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.

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.

Further, 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.

SPECIAL INTERROGATORY NO. 11:

Please identify each and every organization, group, and/or youth group, whose membership consisted of minors that YOU participated in over the last 5 years.

Response to Special Interrogatory No. 11:

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

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.

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

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.

Response to Special Interrogatory No. 12:

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

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.

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

SPECIAL INTERROGATORY NO. 14:

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

Response to Special Interrogatory No. 14:

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

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.

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

SPECIAL INTERROGATORY NO. 18:

Please identify each and every personal asset YOU own which is not otherwise owned by the defendant Diocese of Stockton. This interrogatory is specifically looking for information about YOUR personal assets, meaning all bank accounts, property, stocks, and any other tangible asset that could be used to satisfy a judgment in this action should one be rendered against YOU.

Response to Special Interrogatory No. 18:

Defendant objects to this interrogatory on the grounds that such discovery is improper pursuant to Civil Code § 3295(a).

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.

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

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.

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.

Further, 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.

SPECIAL INTERROGATORY NO. 20:

Please identify each and every individual (by name address and telephone number) YOU have communicated with since July of 2001 about the allegations stated in the complaint against YOU and defendant Arakal.

Response to Special Interrogatory No. 20:

Defendant objects to this interrogatory on the grounds that it seeks information protected by the attorney-client privilege, attorney work product doctrine, and joint defense privilege. It also seeks information regarding a canonical investigation, which is not within the jurisdiction of this court and thus constitutes information which is neither relevant nor calculated to lead to the discovery of admissible evidence outside of the canonical investigation and privileged conversations. I have discussed the matter with Mary Mullins and Owen Kummerle. I do not specifically recall discussing the allegations with other persons.

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.

Further the answers are incomplete as they do not give the address and telephone number of each and every person identified.

Please provide a supplemental, verified response to this discovery.

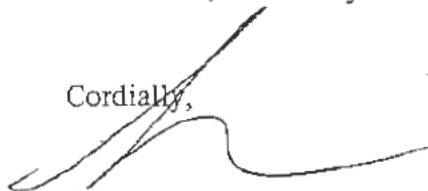
The discovery propounded and the responses requested contain important evidence necessary for the plaintiff(s) to fully and fairly evaluate their claim against your clients. Improper and unfair withholding of this information can only cause unnecessary court delays and do nothing but increase the cost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



George J. MacKoul
SABBAH & MACKOUL

GJM/

1 FROM This portion applies to a bill for Payment to you?

Date 01/13/03 FedEx Tracking Number 831833513969

Sender's Name PAUL W. Balestracci Phone 209 948-9200

Company NEUMILLER & BEARDSLEE

Address 509 W WEBER AVE FL 5

City STOCKTON State CA ZIP 95207

2 Your Internal Billing Reference 09660-29987

3 To

Recipient's Name George Joseph MacKoul Phone 508 495-4955

Company Sabbah and MacKoul

Address 49 Locust Street

City Falmouth State MA ZIP 02540



4a Express Package Service Packages up to 150 lbs. Delivery commitment may be later on some days.

FedEx Priority Overnight Next business morning

FedEx Standard Overnight Next business afternoon

FedEx First Overnight Call next business morning delivery to select locations

FedEx 2Day Second business day FedEx Envelope rate not available. Minimum charge One pound rate

FedEx Express Saver Third business day

NEW FedEx Extra Hours Late drop-off with next business afternoon delivery to select locations

4b Express Freight Service Packages over 150 lbs. Delivery commitment may be later on some days.

FedEx 1Day Freight* Next business day

FedEx 2Day Freight Second business day

FedEx 3Day Freight Third business day

5 Packaging *Declared value limit \$500

FedEx Envelope*

FedEx Pak* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Surety Pak

Other Pkg. Includes FedEx Box, FedEx Tube, and customer pkg.

6 Special Handling Include in FedEx address in Section 3

SATURDAY Delivery Available only for FedEx Priority Overnight and FedEx 2Day to select ZIP codes

HOLD Weekday at FedEx Location Not available for FedEx First Overnight

HOLD Saturday at FedEx Location Available only for FedEx Priority Overnight and FedEx 2Day to select locations

Does this shipment contain dangerous goods? This box must be checked.

No Yes Requires shipping Shipper's Declaration Yes Shipper's Declaration not required Dry Ice Dry Ice, 2 LB/boxes

Dangerous Goods (incl. Dry Ice) cannot be shipped in FedEx packaging or with FedEx Extra Hours service. Cargo Aircraft Only

7 Payment Bill to: FedEx Bill to Account or Credit Card (See below)

Sender Account No. in Section 1 will be billed

Recipient Third Party Credit Card Cash/Check

Total Packages 1 Total Weight 5 Total Charges 447

Our liability is limited to \$100 unless you declare a higher value. See the FedEx Service Guide for details.

8 Release Signature Sign to authorize delivery without obtaining signature

By signing you authorize us to deliver this shipment without obtaining a signature and agree to indemnify and hold us harmless from any resulting claims.

Questions? Visit our Web site at fedex.com or call 1 800 Go FedEx 800.463.3339

SMS-Rev. Date 7/01-1/01 #192625-02/894 2001 FedEx PRINTED IN U.S.A.

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FedEx
Ex Wireless Solutions
Ex Address Checker

Track Shipments Detailed Results

[Quick Help](#)

Tracking Number 831833513969
Reference Number 09660 -29087
Ship Date 03/13/2003
Delivered To Receipt/Frnt desk
Delivery Location FALMOUTH MA
Delivery Date/Time 03/17/2003 12:15
Signed For By C.NANCY
Service Type Standard Pak

Tracking Options

- Obtain a [Signature Proof of Delivery](#)
- [Email these tracking results](#) to one or more recipients
- [Track More Shipments](#)

WANT TO KNOW?

Signature Proof of Delivery
em Dan
Get it in writing! [click here](#)

Scan Activity	Date/Time	Comments
Delivered/FALMOUTH MA	03/17/2003 12:15	
On FedEx vehicle for delivery/WEST YARMOUTH MA	03/17/2003 09:33	
Arrived at FedEx Destination Location/WEST YARMOUTH MA	03/15/2003 09:36	
Package status/WEST YARMOUTH MA	03/15/2003 09:36	Package not due for delivery
Left FedEx Sort Facility/MEMPHIS TN	03/15/2003 04:03	
Left FedEx Sort Facility/MEMPHIS TN	03/15/2003 02:21	
Left FedEx Origin Location/STOCKTON CA	03/14/2003 17:43	
Picked up by FedEx/STOCKTON CA	03/14/2003 14:21	
Pickup status/STOCKTON CA	03/13/2003 19:57	Package received after FedEx cutoff time
Pickup status/STOCKTON CA	03/13/2003 18:07	Package received after FedEx cutoff time

Your Detailed Tracking Results Have Been Emailed

Email was sent to the following people:

policemisconduct@compuserve.com

EXHIBIT D

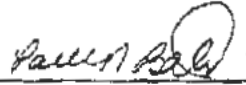
AGREEMENT TO EXTEND TIME TO MAKE MOTION TO COMPEL

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