

FILE ANY ADDITIONAL
DOCUMENTS IN
FILE # 4

THIS FILE FOLDER CONTAINS DOCUMENTS DATED:

2-20-04 TO 1-25-05

FINAL REPORT

**Of the Canonical Investigation Into
The Allegations Of Harrassment and
Defamation of Character
Raised By Ms Kathleen Machado
Against Reverend Joseph Illo**

**Submitted to The Most Reverend Stephen E. Blaire
Bishop of the Diocese of Stockton
by
Rev. Harmon Skillin, J.C.D
and
Sr. Beverly K. Dunn, S.P., J.C.D**

January 6, 2003

MAC-0205

a pastor to use his staff as a buffer to avoid someone he considers as making romantic advances.

CONCLUSIONS AND RECOMMENDATIONS

1. Fr. Illo needs to be aware of the fact that he is an attractive man, physically, spiritually and socially. This leads to a need for him to take great care in his pastoral ministry with women, particularly vulnerable women. Perhaps some counseling for Fr. Illo in gender boundaries and the pastoral care of women would be appropriate.
2. The Petitioner needs to be aware of her own vulnerability as a woman suffering the trauma of divorce. She needs to be aware of how this vulnerability drives her into continued and frustrating attempts at establishing relationships.
3. The Petitioner needs to be aware that the inclusion of her own minor children in the management of adult relationships, if not handled appropriately could be cause of great distress for those same children now and in the future.
4. The Petitioner needs to be aware that she has the right to go to any parish in the practice of her religion. However, she does not have the right to demand leadership roles in those parishes.
5. There is sufficient testimony to indicate that Fr. Illo on occasion can exhibit two opposite facets of a personality—on the one hand kind and helpful and sensitive and on the other hand dictatorial, manipulative and insensitive.
6. Therefore, it is recommended that this file be reviewed by Ms Colleen Branagan with regard to Fr. Illo's management style and that her recommendations and advice be followed.
7. It is recommended and hoped that the Petitioner seek counseling for dealing with her current state in life.

MAC-0299

B. Poor Pastoral Skills

Fr. Ilo's handling of the incident with the child, and the other incidents indicate a need for improvement of his pastoral management skills

C. Fr. Ilo's

The documents, including the letters, and Fr. Ilo's actions indicate a need to grow in his ability to handle appropriate pastoral relationships with women both interpersonally and professionally.

Thanks, and blessings.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

---OO---

KATHLEEN MACHADO, as an)	
Individual and as Guardian)	
ad Litem for RACHEL LOMAS)	
and AMBER LOMAS,)	
)	
Plaintiffs,)	
vs.)	No. CV018440
)	
FR. JOSEPH ILLO, FR. FRANCIS)	
JOSEPH aka FR. FRANCIS ARAKAL,)	
FR. RICHARD RYAN, BISHOP)	
STEVEN BLAIRE AND THE DIOCESE)	
Of STOCKTON and DOES 1 to 100,)	
)	
Defendants.)	Volume 1

DEPOSITION OF STEPHEN E. BLAIRE

Tuesday, October 5, 2004 - 1:02 p.m.

Deposition Officer:
Dennis G. Peyton, C.S.R. No. 2934

Taken in the offices of:
NEUMILLER & BEARDSLEE
509 W. Weber Avenue
Fifth Floor
Stockton, California

1 Q. And the law that you are using, the laws in the
2 two systems are -- civil law and the canon law are
3 totally separate, correct?

4 A. They are separate.

5 Q. So the canonical finding or what was being
6 alleged was whether Father Illo had somehow harassed and
7 defamed the character of Kathleen Machado and her
8 family, correct?

9 A. I'm sorry, say that again.

10 Q. The -- the canonical investigation is regarding
11 allegations of harassment and defamation of character
12 raised by Kathleen Machado against Father Illo, correct?

13 That's what it was about?

14 A. Yes, they were about those allegations, all
15 right.

16 MR. COUGHLAN: Go ahead.

17 MR. BOSKOVICH: Q. It's important to you as a
18 bishop to know whether you have a pastor that's defaming
19 and harassing; isn't that true?

20 A. I believe this is a preliminary investigation
21 and a preliminary investigation is just to determine
22 whether there's some credibility to the allegations.

23 Q. Why is it called a final report?

24 A. I think it's called a final report because he
25 finished his report. He did all that he could do, all

1 they could do.

2 Q. Okay. A final report of the preliminary
3 investigation?

4 A. Yes.

5 Q. What is the next step after the preliminary
6 investigation?

7 A. The bishop makes a determination whether or not
8 there is credibility to the allegations, and then once
9 you determine there's credibility, then you do a full,
10 complete investigation.

11 Q. How is the full and complete investigation
12 different from the preliminary investigation?

13 A. It's much more thorough. You need to have --
14 for a preliminary investigation, you only need to have
15 some probability and in a -- and in a full investigation
16 you need to have, I believe, a moral certitude.

17 Q. Okay. In a preliminary investigation, are
18 there -- are there findings and recommendations made by
19 the investigators?

20 A. Well, in this case there was.

21 Q. Is that -- is that appropriate?

22 A. I'm not a canon lawyer. I can't answer that
23 question.

24 Q. Is Father Skillin a canon lawyer?

25 A. Yes.

1 Q. Sister Dunn a canon lawyer?

2 A. Yes.

3 Q. Is Monsignor Ryan a canon lawyer?

4 A. Yes.

5 Q. Did Monsignor Ryan ever criticize this report?

6 A. No.

7 Q. Did he ever say that, for example, that Sister

8 Beverly should not have said that Father Illo's handling

9 of the incidents with the child and the other incidents

10 indicate a need for improvement of his pastoral

11 management skills?

12 A. What is the question?

13 Q. Did he ever criticize that comment?

14 A. I told you he did not criticize this report.

15 Q. In any way?

16 A. He never criticized the report.

17 Q. Did you ever ask Monsignor Ryan what you should

18 do after you received this report?

19 A. We discussed what we should do.

20 Q. What -- tell me what was said during that

21 discussion.

22 A. We determined to wait to see what was going to

23 happen in the litigation.

24 Q. So are you essentially deferring to a civil

25 jury?

1 A. No, but we are waiting -- we were waiting to
2 see what would develop.

3 Q. And if Father -- if Father Illo were to be
4 found by a civil jury to have committed defamation
5 against Kathleen Machado, and intentional infliction of
6 emotional distress, would your finding then be that --
7 that -- that that happened?

8 MR. BALESTRACCI: I'll object. That
9 mischaracterized his finding.

10 MR. BOSKOVICH: Q. Well, he has to make a
11 determination, I'll use the word determination.

12 A. It would be a factor in a determination.

13 Q. In your experience as a priest and bishop, how
14 many times have you been involved -- how many times, to
15 your knowledge, has a canonical investigation been put
16 on hold while a civil lawsuit proceeded?

17 A. I have no idea.

18 Q. Have you consulted with anybody other than your
19 own attorney as to whether that's appropriate under
20 canon law?

21 A. I have not. Under canon law the bishop can
22 make his decision.

23 Q. Okay.

24 MR. MACKOUL: Can we take a break for one
25 second?

1 MR. BALESTRACCI: Yeah, why don't we take five
2 seconds.

3 MR. BOSKOVICH: I'd like to take breaks every
4 hour.

5 MR. BALESTRACCI: That's good.

6 MR. BOSKOVICH: Thank you.

7
8 (1:58 p.m. - 2:06 p.m.)

9
10 MR. BOSKOVICH: Q. Okay. One last question on
11 the canonical investigation and I'll move on, Your
12 Excellency.

13 Do you have any intention of making a final
14 determination?

15 A. When all of this is finished, I will go back
16 to -- to see if -- how to close it. I intend to close
17 it. You can't leave it open forever.

18 Q. Okay. Has Father Illo expressed any concern
19 about the fact that this has been held open for so long?

20 A. No.

21 Q. All right. Now, I'll go back to the -- we've
22 talked about two instances of when you spoke with Father
23 Illo regarding the allegations of the lawsuit, one was
24 the reinstatement meeting, the second was speaking in
25 passing in the parking lot. When was the other

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STATE OF CALIFORNIA,)

) ss.

COUNTY OF SAN JOAQUIN.)

I, Dennis G. Peyton, Certified Shorthand

Reporter of the State of California, do hereby certify:

That on the date and time herein indicated the witness herein named appeared before me for the purpose of giving their deposition; that after the witness was sworn by me in all respects as required by law, I took down in shorthand notes the said witness' testimony and the proceedings had at the time of the giving of such testimony; that I thereafter transcribed my shorthand notes of such testimony by computer-aided transcription, the above and foregoing being a full, true and correct transcript of all proceedings had and testimony given.

Certified Shorthand Reporter No. 2934

1 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**
A Professional Corporation
2 2453 Grand Canal Boulevard, Second Floor
Stockton, California 95207-8253
3 Telephone (209) 477-3833
VLADIMIR F. KOZINA, ESQ.
4 CA State Bar No. 095422
MICHAEL L. PHILLIPS, ESQ.
5 CA State Bar No. 232978

6 **NEUMILLER & BEARDSLEE**
A Professional Corporation
7 P.O. Box 20
Stockton, CA 95201-3020
8 Telephone: (209)948-8200
PAUL N. BALESTRACCI
9 CA State Bar No. 083987

10 Attorneys for Defendants
Father Joseph Illo, Monsignor Richard J. Ryan, Bishop
11 Stephen E. Blaire, And The Roman Catholic Bishop Of Stockton,
a Corporation Sole
12

13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**
14

15 KATHLEEN MACHADO AS AN INDIVIDUAL)	CASE No. CV018440
16 AND AS GUARDIAN AD LITEM FOR RACHEL)	
17 LOMAS AND AMBER LOMAS,)	POINTS AND AUTHORITIES IN
18 Plaintiffs,)	OPPOSITION TO PLAINTIFF'S MOTION
19 vs.)	FOR PROTECTIVE ORDER TO
20 FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)	PROHIBIT THE TAKING OF THE
21 FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)	DEPOSITION OF JOHNNY SMITH
22 BISHOP STEVEN BLAIRE AND THE DIOCESE)	DATE: FEBRUARY 8, 2005
23 OF STOCKTON, ET AL.,)	TIME: 9:00 A.M
24 Defendants.)	DEPARTMENT: 41
	TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
	TRIAL DATE: FEBRUARY 22, 2005

24 **INTRODUCTION**

25 Plaintiff has brought this motion to prevent Defendants from taking the deposition of a
26 witness identified in their discovery responses, Johnny Smith. This motion is set to be heard on
27 February 8, 2005.

28 Points And Authorities In Opposition To Plaintiff's Motion For Protective Order To Prohibit The Taking Of The
Deposition Of Johnny Smith

PE FILED
SUPERIOR COURT-STOCKTON
05 JAN 25 PM 3:49
JOSE A. JONHOUEIRO, CLERK
Jose A. Jonhuevo
BY _____
DEPUTY

1 **SUMMARY OF ARGUMENT**

2 Plaintiff's motion is untimely pursuant to California Code of Civil Procedure Section
3 2024(a) and should be denied on that basis. Furthermore, sanctions are appropriate in this matter
4 under California Code of Civil Procedure Section 2025. Defendants also reserve the right to
5 oppose Plaintiff's motion on additional grounds at the time of hearing and present further points
6 and authorities at such time.

7 **LEGAL ARGUMENT**

8 **I. PLAINTIFF'S MOTION IS UNTIMELY PURSUANT TO CALIFORNIA**
9 **CODE OF CIVIL PROCEDURE SECTION 2024(a)**

10 Plaintiff's motion is untimely. California Code of Civil Procedure Section 2024(a) states
11 in pertinent part:

12 "Except as otherwise provided in this section, any party shall be entitled as a matter of
13 right to complete discovery proceedings on or before the 30th day, and to have motions
14 concerning discovery heard on or before the 15th day, before the date initially set for the
15 trial of the action."

16 Pursuant to California Code of Civil Procedure Section 2024(a), all motions concerning
17 discovery shall be heard on or before the 15th day before the date initially set for the trial of the
18 action. Trial of this action is set for February 22, 2005; therefore, the last day to have discovery
19 motions heard is February 7, 2005. This motion concerning discovery, the deposition of Johnny
20 Smith, is set to be heard on February 8, 2005, which is outside the time permitted by Section
21 2024(a) to have such motions heard. Plaintiff's motion for protective order is untimely pursuant
22 to Section 2024(a) and should be denied on that basis.

23 **II. SANCTIONS SHOULD BE AWARDED AGAINST PLAINTIFF FOR THE**
24 **COST OF OPPOSING THIS MOTION**

25 California Code of Civil Procedure Section 2025 states in pertinent part:

26 "The court shall impose a monetary sanction against under Section 2023 against any
27 party, person, or attorney who unsuccessfully makes or opposes a motion for a protective
28 order, unless it finds that one subject to the sanction acted with substantial justification or
that other circumstances make the imposition of the sanction unjust."

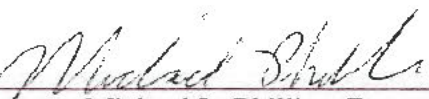
1
2 Sanctions are appropriate and justified in this matter. Defendant's counsel attempted to
3 meet and confer with Plaintiff's counsel regarding the fact that this motion is untimely and
4 further attempted to resolve the underlying issue presented in Plaintiff's motion; please see
5 correspondence to Plaintiff's counsel attached as Exhibit One to the Declaration of Michael L.
6 Phillips served and filed herewith. Plaintiff's counsel was given the opportunity to remove this
7 untimely motion from the court's calendar and chose not to do so. Therefore, Defendants should
8 be entitled to recover amounts expended in opposing this motion.
9

10 **CONCLUSION**

11 Plaintiff's motion for protective order is untimely pursuant to California Code of Civil
12 Procedure Section 2024(a) and should be denied on that basis. In addition, sanctions should be
13 imposed against Plaintiff's counsel under California Code of Civil Procedure Section 2025 for
14 the costs of opposing this motion as identified in the Declaration of Michael L. Phillips.
15

16 Dated: January 24, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

17 By: 
18 Michael L. Phillips, Esq.

1 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**
A Professional Corporation
2 2453 Grand Canal Boulevard, Second Floor
Stockton, California 95207-8253
3 Telephone (209) 477-3833
VLADIMIR F. KOZINA, ESQ.
4 CA State Bar No. 095422
MICHAEL L. PHILLIPS, ESQ
5 CA State Bar No. 232978

Filed JAN 25 2005
ROSA JUNQUEIRO, CLERK
By Rosa A. Junqueiro
DEPUTY

6 **NEUMILLER & BEARDSLEE**
A Professional Corporation
7 P.O. Box 20
Stockton, CA 95201-3020
8 Telephone: (209)948-8200
PAUL N. BALESTRACCI
9 CA State Bar No. 083987

10 Attorneys for Defendants
Father Joseph Illo, Monsignor Richard J. Ryan, Bishop
11 Stephen E. Blaire, And The Roman Catholic Bishop Of Stockton,
a Corporation Sole
12

13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**
14

15 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE NO. CV018440**
16 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,) DECLARATION OF MICHAEL L.
17 **Plaintiffs,) PHILLIPS IN SUPPORT OF**
vs.) DEFENDANT'S OPPOSITION TO
18 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA) PLAINTIFF'S MOTION FOR**
FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,) PROTECTIVE ORDER TO PROHIBIT
19 **BISHOP STEVEN BLAIRE AND THE DIOCESE) THE TAKING OF THE DEPOSITION OF**
OF STOCKTON, ET AL.,) JOHNNY SMITH
20 **Defendants.) DATE: FEBRUARY 8, 2005**
) TIME: 9:00 A.M
21 **) DEPARTMENT: 41**
) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
22 **) TRIAL DATE: FEBRUARY 22, 2005**
23 **)**

24 I, MICHAEL L. PHILLIPS, declare as follows:

25 1. I am attorney licensed to practice law in the State of California, and am an associate with
26 the law firm of Mayall, Hurley, Knutsen, Smith & Green, attorneys of record for defendants
27 FATHER JOSEPH ILLO, MONSIGNOR RICHARD J. RYAN, BISHOP STEPHEN E. BLAIRE, AND THE
28 Declaration Of Michael L. Phillips In Support Of Opposition To Plaintiff's Motion For Protective Order To
Prohibit The Taking Of The Deposition Of Johnny Smith

1 ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation Sole. I make this declaration based on
2 personal knowledge and, if called to testify, could and would testify consistently herewith.

3 2. I sent correspondence to Plaintiff's counsel, George J. MacKoul, Esq. and Anthony
4 Boskovich, Esq., dated January 19, 2005 indicating that their Motion For Protective Order is
5 untimely and attempting to resolve the underlying issues presented in the motion. A true and
6 correct copy of this correspondence is attached hereto as Exhibit 1.

7 3. I spoke with Anthony Boskovich, Esq. on January 24, 2005 and was informed that
8 Plaintiff's were not willing to withdraw their motion as requested.

9 4. I am requesting the following monetary sanctions for the time it has taken me to oppose
10 Plaintiff's motion.
11

12 a. I spent approximately 2.5 hours reviewing Plaintiff's Motion and researching,
13 drafting, and filing these Points and Authorities and Declaration in Opposition to Plaintiff's
14 Motion.

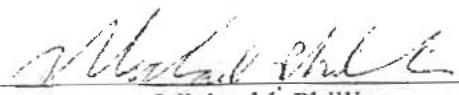
15 b. I anticipate spending approximately 2.5 hours attending the hearing on this
16 motion.

17 c. My hourly rate is \$135 per hour.

18 d. I am therefore asking the court to award me sanctions in the amount of \$675.00.
19
20 (5.0 hours at \$135/hour).

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

23 Executed on January 24, 2005 at Stockton, California.

24
25 
26 Michael I. Phillips

LAW OFFICES
MAYALL, HURLEY, KNUTSEN, SMITH & GREEN
A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
SECOND FLOOR
STOCKTON, CALIFORNIA 95207-8253

LEN B. HONEY
1886-1972
EDWIN MAYALL
1907-1980

JOHN J. HURLEY
CLARENCE D. KNUTSEN
ALAN E. SMITH
DENNIS J. GREEN
RETIRED

FAX (209) 473-4818

TELEPHONE (209) 477-3833

WILLIAM W. HALE
MARK STEPHEN ADAMS
J. ANTHONY ABBOTT
VLADIMIR F. KOZINA
KRISTEN M. HEGGE
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM III
JOSEPH A. SALAZAR, JR.
JEFFREY B. SETNESS
QUENDRITH L. MACEDO
JAY M. HISLOP
DAVID CHENG
ROBERT RODRIGUEZ
CHAD J. WOOD
REINA G. MINOYA
AMANDA R. BERLIN
CHRISTOPHER G. NIELSEN
MICHAEL L. PHILLIPS

January 19, 2005

George J. MacKoul, Esq.
Sabbah and MacKoul
49 Locust Street
Falmouth, Mass 02540

Via Fax: (508)495-4115

Anthony Boskovich, Esq.
28 North First Street, 6th Floor
San Jose, CA 95113-1210

Via Fax: (408)286-5170

Re: *Machado v. Ilo, et al.*

Dear Messrs. MacKoul and Boskovich:

We are in receipt of your motion for protective order to be heard on February 8, 2005 regarding the deposition of Johnny Smith. This motion is untimely and we will be opposing it on that basis, as well as others. Pursuant to California Code of Civil Procedure Section 2024(a), all motions concerning discovery shall be heard on or before the 15th day before the date initially set for the trial of the action. Therefore, in this matter the last day for the court to hear discovery motions is February 7, 2005.

As early conveyed, we would be willing to forego taking the deposition of Johnny Smith if you agree that he will not be called as a witness in any capacity, for any purpose, in this matter. Otherwise, if you intend to call Mr. Smith as a witness, we will proceed forward with his deposition. Not only is your motion untimely, but you waived any objections regarding the testimony of Johnny Smith when you failed to raise them in your verified responses to Form Interrogatories identifying him as a witness.

Please remove your motion for protective order from the court's calendar by Monday, January 24, 2005 at 12:00 p.m. If you do not do so appropriate sanctions will be sought. If you do not wish to proceed forward with the deposition of Johnny Smith, forward written confirmation that you will not be calling him as a witness for any purpose at trial and we will forego taking his deposition.

Should you wish to discuss this matter in greater detail, do not hesitate to contact myself, or Vladimir Kozina.

January 19, 2005
Page 2

Very truly yours,

Mayall, Hurley, Knutsen, Smith & Green

By:



MICHAEL L. PHILLIPS

VFK/sas

cc Paul N. Balestracci, Esq. – Via Fax: 948-4910
Michael D. Coughlan, Esq. – Via Fax: (209)957-5338

Filed
ROSA J. GARCIA, CLERK
25 2005
D. James A. Guerrero
Deputy

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN}

I am a citizen of the United States. My business address is 2453 Grand Canal Boulevard, Second Floor, Stockton, California 95207. I am employed in the County of San Joaquin. I am over the age of 18 years and not a party to the within cause. On the date set forth below, I served the document(s) described as follows on the following person(s) in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

DOCUMENT(S) SERVED: POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER TO PROHIBIT THE TAKING OF THE DEPOSITION OF JOHNNY SMITH; DECLARATION OF MICHAEL L. PHILLIPS

NAME(S) AND ADDRESS(ES) OF PERSON(S) SERVED:

GEORGE J. MACKOUL, ESQ.
SABBAH AND MACKOUL
49 LOCUST STREET
FALMOUTH, MASS 02540

ANTHONY BOSKOVICH, ESQ.
28 NORTH FIRST ST., 6TH FLOOR
SAN JOSE, CA 95113-1210

PAUL N. BALESTRACCI, ESQ.
NEUMILLER & BEARDSLEE
P.O. BOX 20
STOCKTON, CA 95201-3020

MICHAEL COUGHLAN, ESQ.
LAW OFFICES OF MICHAEL D. COUGHLAN
3031 W. MARCH LANE, #210 WEST
STOCKTON, CA 95219

 BY FACSIMILE Facsimile to the Facsimile telephone number(s) and at the time(s) indicated above, on the date of execution of this document, as set forth below.

BY MAIL. I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Stockton, CA. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope(s) and placed it/them for collection and mailing on the date of execution of this document, as set forth below, following ordinary business practices to the persons above where indicated.

 BY PERSONAL DELIVERY. I caused such document to be delivered to the party in said action by delivering a true copy thereof to the law offices of the person listed above where indicated (By Personal Service).

BY EXPRESS MAIL; Overnight Delivery. I caused a true copy thereof to be delivered by depositing for collection on this same date, a sealed envelope addressed to the person(s) at the address(es) set forth above, into a depository box of the overnight service listed next to each address, at Stockton, California.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
2 Served and executed on January 25, 2005, at Stockton, California.

3 *Sheri Sigman*
4 SHERI SIGMAN
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FILED
05 JAN 24 PM 2:51
ROSA B. FERREIRO, CLERK
BY [Signature] DEPUTY

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
Sabbah and MacKoul
2 Attorneys and Counselors at Law
49 Locust Street
3 Falmouth, Massachusetts 02540
4 508-495-4955
5 Anthony Boskovich, No. 121198
Law Offices of Anthony Boskovich
6 28 N. First Street, 6th Floor
San Jose, California 95113-1210
7
8 408-286-5150
9 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

\$150.00 - 200501268018

14 KATHLEEN MACHADO, individually and
in her capacity as Guardian ad Litem for
15 RACHEL LOMAS and AMBER LOMAS,
Plaintiffs,
16 v.
17 FATHER JOSEPH ILLO; FATHER FRANCIS
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
18 FATHER RICHARD RYAN; BISHOP STEVEN
BLAIRE; THE DIOCESE OF STOCKTON;
19 DOES 1 through 100,
Defendants.

No. CV 018440
JURY FEES

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22 ///
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25 ///
26 ///
27 ///

FILED
05 JAN 20 PM 2:09
ROSA JORDAN, CLERK
BY Janela Edwards
DEPUTY

1 George J. MacKoul, No. 170586
Sabbah and MacKoul
2 Attorneys and Counselors at Law
49 Locust Street
3 Falmouth, Massachusetts 02540

4 508-495-4955

5 Anthony Boskovich, No. 121198
Law Offices of Anthony Boskovich
6 28 N. First Street, 6th Floor
San Jose, California 95113-1210

8 408-286-5150

9 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
in her capacity as Guardian ad Litem for
15 RACHEL LOMAS and AMBER LOMAS,
Plaintiffs,

16 v.

17 FATHER JOSEPH ILLO; FATHER FRANCIS
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
18 FATHER RICHARD RYAN; BISHOP STEVEN
BLAIRE; THE DIOCESE OF STOCKTON;
19 DOES 1 through 100,
Defendants.

No. CV 018440

PLAINTIFFS' OPPOSITION TO
MOTION FOR CONTINUANCE

Date: 2 February 2005

Time: 9:00 A.M.

Department: 41

Judge: Hon. Elizabeth Humphreys

Action Filed: 10 September 2002

Trial Date: 22 February 2005

22 **INTRODUCTION**

23 On the day of an unsuccessful mediation, defendants Illo, Blaire, Ryan, and Diocese of
24 Stockton chose attorney Vladimir Kozina to be co-counsel with Paul Balestracci. Two days after
25 the association was signed, attorney Kozina learned that he had a conflict and would be unavailable
26 for one of two trials. Rather than informing anybody about the conflict, Mr. Kozina waited almost

1 a month until just 56 days before the start of the trial in this matter to request a continuance. As will
2 be shown, there is no good cause for granting a continuance in this matter, and plaintiffs will be
3 prejudiced should this court grant the request. Mr. Balestracci remains ready, willing, and able to
4 try this case. The motion must be denied.

5
6
7 **STATEMENT OF THE FACTS**
8

9 This case was set for trial in March 2004, in open court, after all counsel consulted with their
10 trial calenders. The court was originally going to set the trial in January, but most of the counsel
11 present objected due to the Christmas and New Years Holiday. The court then suggested 22
12 February 2005. All counsel at that time agreed to this date. The court further commented that
13 having a firm trial date, encourages a "goal" or closure for most cases. At the case management
14 conference held on 1 July 2004, plaintiffs' counsel ask that the trial date remain as set, and defense
15 counsel agreed.

16 On 29 November 2004, in an attempt to resolve the case, all parties attended a mediation
17 before Jack Williams in San Jose. Mr. Williams, a noted and respected mediator, has developed a
18 sub-specialty in clergy sexual abuse cases. Unfortunately, the case did not resolve and Mr. Williams
19 himself suggested that keeping the current trial date would no doubt encourage settlement.

20 By way of background, Paul Balestracci of Nuemiller and Beardslee has been the trial counsel
21 for the Diocese of Stockton, Bishop Blaire, Father Illo, and Monsignor Ryan since the case was filed
22 by plaintiffs, and has and still does engage in every aspect of the case. He still remains trial counsel
23 and has recently informed plaintiffs' counsels that he is ready willing and able to try this case on 22
24 February 2005.

25 On 1 December 2004, Attorney Vladimir Kozina signed an association of counsel. (Exhibit
26 A to Declaration of George MacKoul)

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 On 3 December 2004, just **two days** later, Judge McNatt held a hearing and ordered Mr.
2 Kozina to trial in the *Gruz v. Khaschuk* matter, set to begin on 14 February 2005. (Exhibit A to
3 Declaration of Anthony Boskovich; Exhibit B to Declaration of George MacKoul)

4 On 14 December 2004, eleven days later, and **with full knowledge that Mr. Kozina**
5 **had a conflict**, the association of counsel was filed with this court. Inexplicably, Mr. Kozina
6 waited until 28 December 2004 to inform plaintiffs' counsel that he had a conflict and wanted a
7 continuance.

8 George MacKoul communicated with Mr. Kozina, explaining why plaintiffs could not agree
9 to a continuance. (Exhibit D to Declaration of George MacKoul) When Mr. MacKoul attempted
10 to explained some of these circumstances to Mr. Kozina, he was mocked for even taking up the
11 representation of the plaintiffs. (See Exhibit B to Declaration of George Mackoul)

12 This motion followed.

13
14
15 **ARGUMENT**

16
17 **A. THE MOTION FOR CONTINUANCE MUST BE DENIED BECAUSE**
18 **NO GOOD CAUSE FOR A CONTINUANCE HAS BEEN SHOWN, AND A**
19 **CONTINUANCE WOULD PREJUDICE PLAINTIFFS AND NOT BE IN**
20 **THE INTERESTS OF JUSTICE.**

21 "Although a substitution of attorneys generally is a matter of right ..., a continuance is not."
22 (*Moshos v. General Casualty Company of America* (1963) 216 Cal.App.2d 425, 430 [31 Cal.Rptr. 17]) A
23 party must show good cause to obtain one. (*Nelson v. Gaunt* (1981) 125 Cal.App.3d 623, 637-638 [178
24 Cal.Rptr. 167]; Cal. Rules of Court, rule 375, subd. (c)) "[T]here is no policy in this state of
25 indulgence or liberality in favor of parties seeking continuances." (*County of San Bernardino v. Doria*
26 *Mining & Engineering Corp.* (1977) 72 Cal.App.3d 776, 781 [140 Cal.Rptr. 383]) In fact, continuances
27 of trials are disfavored. (Cal. Rules of Court, rule 375, subd. (c))

1 A court may deny a continuance if the moving party did not act promptly. (*Nelson v. Gaunt*,
2 *supra*, 125 Cal.App.3d at 638 [178 Cal.Rptr. 167]) Here, Mr. Kozina knew that he had a conflict
3 within 2 days of his association, but he waited nearly a month until the end of December before he
4 informed plaintiffs of this fact, there then being less than two months until trial.¹ Additionally,
5 despite his argument, there is nothing in either Mr. Kozina's declaration nor in the court's docket
6 in the case of *Cruz v. Khaschuk*, San Joaquin County Superior Court case number CV015525, that
7 indicates that anything was done after 3 December 2004 to resolve the conflict. (See Exhibit A to
8 Declaration of Anthony Boskovich) Instead, counsel apparently waited until just before New Year's
9 to request a continuance. There is no indication why Mr. Kozina chose to do nothing in this case
10 for over three weeks, and that is on its own basis for denying the continuance. (See *Mahoney v.*
11 *Southland Mental Health Associates Medical Group* (1990) 22 Cal.App.3d 167, 172 [272 Cal.Rptr. 602,
12 605]) Therefore, given a February trial date and absolutely no involvement by Mr. Kozina up until
13 that point, there was a substantial lack of diligence in seeking a continuance. Absent a showing of
14 diligence, the court is well within its discretion in denying the motion to continue. (*Outdoor Services,*
15 *Inc. v. Pabagold, Inc.* (1986) 185 Cal.App.3d 676, 686 [230 Cal.Rptr. 73]; *County of San Bernardino v.*
16 *Doria Mining & Engineering Corporation, supra*, 72 Cal.App.3d at 781 [140 Cal.Rptr. 383])

17 Additionally, this case does not involve the unavailability of trial counsel because Mr. Kozina
18 was not substituted in the place of Mr. Balestracci, but instead came into the case by way of
19 association. Mr. Balestracci has been attorney of record for defendants since the inception of this
20 matter, and in fact represented to this court when trial was set on 1 July 2004 that he would be the
21 trial attorney and would be ready on the February date. (Declaration of Anthony Boskovich) Mr.
22 Balestracci is still attorney of record in this matter, is noticing and conducting discovery, and has
23 stated that he is available and able to try this case. (See Declaration of George MacKoul) When
24

25 ¹In fact, plaintiffs were not informed of the association for over two weeks after it had
26 occurred, despite the fact that Paul Balestracci knew of the association on the day of the
27 mediation when plaintiffs and their counsel were personally present. (See Declaration of
28 Anthony Boskovich)

1 | experienced trial counsel who is familiar with the case, has been counsel of record from inception,
2 | and is available to try it, a continuance should not be granted. (*Fejer v. Paonessa* (1951) 104
3 | Cal.App.2d 190, 194-195 [231 P.2d 50 [new counsel's late entry into case with a scheduling conflict
4 | not good cause for continuance when original trial counsel remained as counsel of record and was
5 | able to try the case]; *Joint Holdings & Trading Company v. First Union National Bank of North Carolina*
6 | (1975) 50 Cal.App.3d 159, 167 [123 Cal.Rptr. 519, 524-25]; *H & H Investment Company v. T-J*
7 | *Construction Company* (1969) 275 Cal.App.2d 58, 62 [79 Cal.Rptr. 890, 892-93]; see also, *Maynard v.*
8 | *Bullis* (1950) 99 Cal.App.2d 805, 806-807 [222 P.2d 685] [continuance denied where counsel who
9 | brought substitution form to trial was unprepared to proceed without a continuance]; *Bixby v. Hotchkis*
10 | (1946) 72 Cal.App.2d 368, 372 [164 P.2d 808] [continuance denied where counsel was at another
11 | trial and sent another lawyer to seek last-minute continuance]; *Flynn v. Fink* (1923) 60 Cal.App. 670,
12 | 674 [213 P. 716] [no good cause for continuance where counsel substituted in five days before trial
13 | knowing they had a scheduling conflict])

14 | Here, what has essentially happened is that trial counsel, as opposed to attorney of record,
15 | has been substituted; Mr. Balestracci remains as counsel, but apparently not as trial counsel. In that
16 | situation, California Rules of Court, rule 375, subdivision (c)(4), requires that there be “an affirmative
17 | showing that the substitution is required in the interests of justice.” No such showing has been made,
18 | nor can it be made. A continuance is therefore inappropriate in this case by the very terms of the
19 | current rule.

20 | Importantly, if the defendants wanted other counsel for trial, they had ample opportunity to
21 | locate counsel because Mr. Kozina was counsel for only two days before his conflict arose, and
22 | nobody was informed of his involvement in the case for two weeks after that. Mr. Kozina simply
23 | could not have been familiar with the facts and procedural posture of this matter by the time he
24 | learned of his conflict, and it was incumbent upon him and the defendants to seek other counsel at
25 | that time if they did not desire Mr. Balestracci to try the case. (*In re Sanders* (1999) 21 Cal.4th 697,
26 | 712 [87 Cal.Rptr.2d 899]; *Flynn v. Fink*, *supra*, 60 Cal.App. at 674 [213 P. 716]) Here, defendants
27 |

1 have made absolutely no showing as to why Mr. Balestracci cannot represent them at trial, requiring
2 denial of the motion. (*Bixby v. Hotchkis, supra*, 72 Cal.App.2d at 371-372 [164 P.2d 808]; *Flynn, supra*,
3 at 674 [213 P. 716]; *Berentz v. Belmont Oil Company* (1906) 148 Cal. 577, 585 [84 P. 47])

4 What becomes clear from this set of facts is that the attempt to add Mr. Kozina was a
5 calculated maneuver to get this case continued. “*Of course* continuances should not be used as a
6 dilatory tactic”, (*Pham v. Pham* (1997) 54 Cal.App.4th 11, 17 [622 Cal.Rptr.2d 42,425] [emphasis
7 in original]), but it would appear that is what is happening here, and it should not be condoned.

8 Defendants’ reliance on *Oliveros v. County of Los Angeles* (2004) 120 Cal.App.4th 1389 [16
9 Cal.Rptr.3d 638] is misplaced. *Oliveros, supra*, presented an egregious case in which the defendant
10 was denied all counsel, and the case simply instructs trial courts to exercise discretion in a balanced
11 manner. That case does not add to body of law as to what constitutes good cause. As argued above,
12 denial of the motion to continue will not deprive defendants of competent trial counsel prepared to
13 try the case; Mr. Balestracci, trial counsel throughout these proceedings, is still on board. In fact,
14 association of Mr. Kozina at the late juncture in this matter virtually guaranteed a request for
15 continuance because of the volumes of documents and the many nuances this case presents.
16 Rather, this case is much closer to the factual scenario of *Fejer v. Paonessa* (1951) 104 Cal.App.2d 190,
17 194-195 [231 P.2d 50], in which no good cause was found.

18 Finally, plaintiffs and their counsel will be significantly prejudiced if a continuance is granted.
19 Mr. Kozina is looking for a continuance of several months, and plaintiffs Rachel and Amber Lomas
20 are children who are bearing the burden of defendants’ misconduct and need closure. Defendant
21 Bishop Blaire has indicated in deposition that he cannot complete his canonical investigation into
22 Father Illo’s conduct, which has tentatively been determined to be sub-par by the Diocese itself, until
23 after this civil matter is concluded, and thus the public is potentially at risk because defendants seem
24 powerless to act until this matter is concluded. (See Exhibits B, C, to Declaration of Anthony
25 Boskovich) Finally, plaintiffs’ counsel are both sole practitioners who have cleared their calendars
26 to try this matter, and to continue the trial will work a hardship on them as well. “All parties and
27

1 | their counsel must regard the date set for trial as certain", (Cal. Rules of Court, rule 375, subd. (a)),
2 | and plaintiffs and their counsel relied on that rule. To continue the trial at this late date will work
3 | an extreme hardship on them, and should not be granted.

4 |
5 | **CONCLUSION**
6 |

7 | As shown above, defendants have not shown good cause for a continuance, and there is no
8 | showing that a continuance would be in the interests of justice. Instead, a continuance will work
9 | extreme prejudice on plaintiffs and their counsel. The motion must be denied.

10 |
11 | Dated: 18 January 2005
12 |

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15 | 
16 | _____
17 | Anthony Beskovich
18 | Attorney for plaintiffs
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Law Offices of Anthony Beskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
Sabbah and MacKoul
2 Attorneys and Counselors at Law
49 Locust Street
3 Falmouth, Massachusetts 02540
4 508-495-4955

5 Anthony Boskovich, No. 121198
Law Offices of Anthony Boskovich
6 28 N. First Street, 6th Floor
San Jose, California 95113-1210
7
8 408-286-5150

9 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
in her capacity as Guardian ad Litem for
15 RACHEL LOMAS and AMBER LOMAS,
Plaintiffs,
16 v.
17 FATHER JOSEPH ILLO; FATHER FRANCIS
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
18 FATHER RICHARD RYAN; BISHOP STEVEN
BLAIRE; THE DIOCESE OF STOCKTON;
19 DOES 1 through 100,
Defendants.

FILED
05 JAN 20 PM 2 09
ROSA JORDAN, CLERK
BY *Parola*
DEPUTY

No. CV 018440

DECLARATION OF GEORGE
J. MACKOUL IN OPPOSITION
TO MOTION FOR
CONTINUANCE

Date: 2 February 2005
Time: 9:00 A.M.
Department: 41
Judge: Hon. Elizabeth Humphreys
Action Filed: 10 September 2001
Trial Date: 22 February 2005

22 GEORGE J. MACKOUL declares:

24 1. I am an attorney at law admitted to practice before all courts in this state in the States of
25 California and Massachusetts and am one of the attorneys of record for plaintiffs in this matter. The
26
27

28 Declaration of George J. MacKoul in Opposition
to Motion for Continuance

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 following facts are derived from my personal knowledge and if called to testify I would and could
2 state the following.

3 2. This case was set for trial in March of 2004, in open court, after all counsel consulted with
4 their trial calenders. The court was originally going to set the trial in January, but most of the counsel
5 present, objected due to the Christmas and New Years Holiday. The court then suggested February
6 22, 2005. All counsel at that time agreed to this date. The court further commented that having a
7 firm trial date, encourages a "goal" or closure for most cases.

8 3. On November 29, 2004, in an attempt to resolve the case, all parties attended a mediation
9 before Jack Williams in San Jose. Mr. Williams a noted and respected mediator has developed a sub
10 specialty in clergy sexual abuse cases. Unfortunately the case did not resolve and Mr. Williams
11 himself suggested that keeping the current trial date would no doubt encourage settlement.

12 4. Trial counsel for the defendants Diocese of Stockton, Fr. Illo, Bishop Blaire, and Fr. Ryan,
13 Paul Balestracci represented to me recently that he would be involved in the trial of this matter.

14 5. On December 1, 2004, Attorney Kozina signed an association of counsel. (See attached
15 Exhibit A)

16 6. On December 3, 2004, **two days** later, Judge McNatt held a hearing and ordered
17 Attorney Kozina to trial on the *Cruz* matter, set to begin on February 14, 2005. (See attached Exhibit
18 B, a true and correct copy of a December 29, 2004 letter from Kozina to MacKoul)

19 7. On December 14, 2004, Attorney Kozina filed the association of counsel with the court.

20 8. On December 28, 2004, Attorney Kozina informed my office for the first time, that he
21 had a conflict and further requested a continuance. (See attached Exhibit C)

22 9. Six months ago, I cleared my calender and cancelled a family vacation to be present to
23 try this case.

24 10. I further made representations to the Superior Court in Massachusetts that I was not
25 available for trial in February early March 2005, on several matters I am handling in another state.

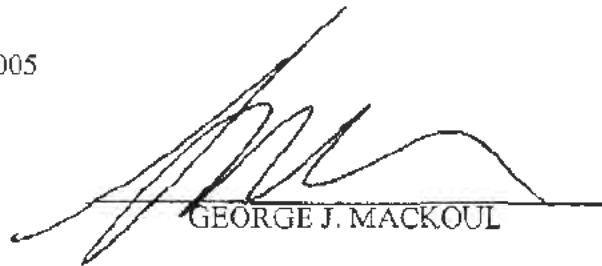
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1 11. I attempted to explain some of these circumstances to Attorney Kozina, (See Exhibit D,
 2 December 28, 2004 letter to MacKoul), but I was mocked by Attorney Kozina for even
 3 taking up the representation of the plaintiffs. (See Exhibit B, December 29, 2005 letter from Kozina
 4 to MacKoul)

5 12. Continuing the trial in this matter will not only cause hardship for myself but also for the
 6 children I represent who are the victims and desperately need closure on this case.

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

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 11 Dated: 19 January 2005

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 13 
 14 GEORGE J. MACKOUL

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 Law Offices of Anthony Boskovich 28 Norik First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

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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

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 SUPERIOR COURT-STOCKTON
 04 DEC 14 AM 8: 04
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 BY FREDDA REED
 DEPUTY

8 Attorneys for Defendants,
 9 FATHER 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)

Case No. CV 018440

17 Plaintiffs,

ASSOCIATION OF COUNSEL

18 vs.

19 FR. JOSEPH ILLO, FR. FANCIS JOSEPH,
 20 a.k.a. FR. FRANCIS ARAKAL, FR.
 21 RICHARD J. RYAN, BISHIP STEVEN
 22 BLAIRD, AND THE DIOCESE OF
 23 STOCKTON

24 Defendants.

25 Neumiller & Beardslee, being the attorneys of record for Defendants FATHER JOSEPH
 26 ILLO, MONSIGNOR RICHARD J. RYAN, BISHOP STEPHEN E. BLAIRE, and THE ROMAN
 27 CATHOLIC BISHOP OF STOCKTON, a Corporation Sole in this action, hereby associates Mayall,
 28 Hurley, Knutsen, Smith & Green as co-counsel of record for Defendants FATHER JOSEPH ILLO,
 MONSIGNOR RICHARD J. RYAN, BISHOP STEPHEN E. BLAIRE, and THE ROMAN
 CATHOLIC BISHOP OF STOCKTON, a Corporation Sole in this matter. The office address and
 telephone number of such associated counsel is:

Association of Counsel

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Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Blvd., 2nd Floor
Stockton, CA 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818

Dated: December 7, 2004

NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION

By: *Paul Balestracci*
PAUL N. BALESTRACCI
Attorney for Defendants,
FATHER. JOSEPH ILLO, MONSIGNOR
RICHARD J. RYAN, BISHOP STEPHEN E.
BLAIRE, and THE ROMAN CATHOLIC
BISHOP OF STOCKTON, a Corporation Sole

Above association accepted.

Dated: December 7, 2004

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

By: *Vladimir F. Kozina*
VLADIMIR F. KOZINA

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 December 15, 2004, I served the within documents:

ASSOCIATION OF COUNSEL



(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 one day after the date of deposit for mailing in affidavit.



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



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



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

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

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

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

Vladimir F. Kozina, Esq.
Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Blvd., 2nd Fl.
Stockton, CA 95207-8253
Telephone: (209) 477-3833
Facsimile: (209) 473-4818
(Co-counsel for Defendants, Father Joseph Illo, Monsignor Richard J. Ryan, Bishop Stephen E. Blaire, and The Roman Catholic Bishop of Stockton, a Corporation sole)

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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 15th day of December 2004, at Stockton, California.



CARY NUNES

LAW OFFICES
MAYALL, HURLEY, KNUTSEN, SMITH & GREEN
 A PROFESSIONAL CORPORATION
 2453 GRAND CANAL BOULEVARD
 SECOND FLOOR
 STOCKTON, CALIFORNIA 95207-8253

LEN H. ROHEY
 1986-1997
 EDWIN MAYALL
 1907-1980

JOHN J. HURLBY
 CLARENCE D. KNUTSEN
 ALAN E. SMITH
 DENNIS J. GREEN
 RBTJBB

FAX (209) 473-4618

TELEPHONE (209) 477-3333

WILLIAM W. RALP
 MARK STEPHEN ADAMS
 J. ANTHONY ABBOTT
 VLADIMIR F. ROZINA
 KRISTEN M. REOR
 STEVEN A. MALCOUN
 MARK E. BERRY
 WILLIAM T. OORNAM III
 JOSEPH A. SALAZAR, JR.
 JEFFREY B. SETNESS
 QUEENKITH L. MACBRO
 JAY M. HESLUP
 DAVID CHBRO
 ROBERT RODRIGUEZ
 CHAD J. WOOD
 RUINA O. MINGYA
 AMANDA A. BERLIN
 CHRISTOPHER G. NIELSEN
 MICHAEL L. PHILLIPS

December 29, 2004

**Via Fax: (508)495-4115
 and First Class Mail**

George J. MacKoul, Esq.
 Sabbah and MacKoul
 49 Locust Street
 Falmouth, Mass 02540

Re: *Machado v. Illo, et al.*

Dear Mr. MacKoul:

My clients are entitled to the counsel of their choice. Under the rules of court concerning continuances, unavailability of counsel due to required presence in another trial mandates a continuance. California decisional law is in accord. I do not believe that Judge Humphreys will make the mistake of being reversed on appeal if she should decide to deprive my clients of their choice of trial counsel.

Cruz v. Khashchuck, much older than the *Machado* case, had actually been tried for 5 weeks prior to a mistrial due to plaintiff's misconduct. The court set the retrial for February 14, 2005, a wholly unanticipated event, on December 3, 2004. You will note that I was associated into the *Machado* matter prior to that. This setting was by the presiding judge of the Superior Court of San Joaquin County, who will be the trial judge in *Cruz*. When he was informed of the calendar conflict, and request was made to continue the *Cruz* matter, he unequivocally indicated the *Cruz* case would proceed. As presiding judge, he makes the calls, I don't.

You speak of prejudice to yourself? It was you, sir that decided to take a California case, though you primarily practice in Boston. You choose the venue; you choose the hardships that go with it. You have West Coast associated counsel, Mr. Boskovich, who could easily handle the case if it were continued to either May or June, 2005. With regard to your contention that there is a hardship on your clients, I do not see one, other than a short trial delay. The acts alleged are compartmentalized in time and there is no financial or other cognizable hardship that I am aware of. In fact, having reviewed the discovery and the facts of this case, I would say that the hardship has been imposed on my clients due to baseless allegations that have been made.

December 29, 2004

Page 2

While I am writing, I would also like to remind you that the litigation privilege as to communications does not apply when you slander Fr. Ilo or members of the Diocese of Stockton in your letters to counsel, as you did in your last communication with Mr. Balestracci. May I suggest more circumspection in your writings.

I would be more than happy to discuss this with you next week. I hope you have a pleasant New Year holiday.

Very truly yours,

Mayall, Hurley, Knutsen, Smith & Green

By *Vladimir F. Kozina*
VLADIMIR F. KOZINA *1040*

VFK/sas

cc Paul N. Balestracci, Esq. - Via Fax: 948-4910
Anthony Boskovich, Esq. - Via Fax: (408)286-5170
Michael D. Coughlan, Esq. - Via Fax: (209)957-5338

LAW OFFICES
MAYALL, HURLEY, KNUTSEN, SMITH & GREEN
 A PROFESSIONAL CORPORATION
 2450 GRAND CANAL BOULEVARD
 SECOND FLOOR
 STOCKTON, CALIFORNIA 95207-8253

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JOHN J. HURLEY
 CLARENCE D. KNUTSEN
 ALAN F. SMITH
 DENNIS J. GREEN
 RETIRED

FAX (209) 453-4818
 TELEPHONE (209) 477-3831

WILLIAM W. HALL
 MARK STEPHEN ADAMS
 J. ANTHONY ABBOTT
 VLADIMIR F. KOZINA
 KRISTEN M. HEGGER
 STEVEN A. MALCOUN
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 JOSEPH D. SETHICK
 QUENDRICK L. MACEDO
 JAY M. HISELOP
 DAVID CHENG
 ROBERT RODRIGUES
 CHARL WOOD
 KRISHA O. MINOYA
 AMANDA R. HERLIN
 CHRISTOPHER C. NIELSEN
 MICHAEL L. PHILLIPS

December 28, 2004

George J. MacKoul, Esq.
 Sabbah and Mackoul
 49 Locust Street
 Falmouth, Mass 02540

Via Fax: (508)495-4115

Anthony Boskovich, Esq.
 28 North First Street, 6th Floor
 San Jose, CA 95113-1210

Via Fax: (408)286-5170

Re: *Machado v. Ilo, et al.*

Dear Messrs. MacKoul and Boskovich:

I am in receipt of Mr. MacKoul's correspondence to Paul Balestracci dated December 18, 2004. Unfortunately, yesterday I attended a settlement conference in a matter entitled *Cruz v. Khashchuk*, in San Joaquin County Superior Court. There, the presiding judge stated that that case will go to trial as scheduled on February 14, 2005.

By way of history, the *Cruz* case was previously in its 5th week of trial when a mistrial was declared and the new trial date of February 14, 2005 assigned. The new trial is likely to exceed three months due to the court's 3 day trial schedule. It will be impossible for me to be able to try the *Machado* matter on February 22, 2005.

In light of the above, it is necessary that I seek a continuance in the *Machado* matter. I direct your attention to *Oliveros v. County of Los Angeles* (2004), 120 Cal.App.4th 1389 which points out that in circumstances such as these, a continuance should be granted. Please let me know if it will be necessary for me to file a formal motion.

I will be out of the office until January 3, 2005, but will be happy to discuss this matter with you at that time.

Very truly yours,
 Mayall, Hurley, Knutsen, Smith & Green

By V. Kozina
 VLADIMIR F. KOZINA *lsd*

SABBAH AND MACKOULA PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW49 Locust Street
Falmouth, Massachusetts 02540508-495-4955
Fax: 508-495-4115
E-mail: sabbahmackoul.com4255 Main Street
Riverside, California 92501
909-682-2021
Fax: 909-682-7341355 West Las Palmas Avenue
Pasadena, California 91363
209-892-2233
Fax: 209-892-2572Park Place East
348 Park Street, Suite 108
North Reading, Massachusetts 01864
978-664-8944
Fax: 978-664-0820

Please reply to: FALMOUTH OFFICE

December 28, 2004

File no. Machado/CA02-0001

Mr. Vladimir F. Kozina
Attorney at Law
Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Boulevard
Second Floor
Stockton, California 95207-8253**VIA FACIMILE AND U.S. MAIL 209-473-4818***Re: Lomas v. Diocese of Stockton, et. al*

Dear Mr. Kozina:

Please allow this letter to serve as a response to your letter on this date.

First, Attorney Boskovich and I were quite surprised to find out for the first time, today, approximately 56 days prior to trial, that you are now the trial counsel on this matter.

While I am sympathetic to your position, please understand ours. This case is over two years old. Judge Humphrey's asked attorney Balestracci in March of 2004 if he was available for trial in February of 2005. He represented to the court that he was available to try the case on that date, as trial counsel. The other counsel in the case did the same. No representations were ever made to the court by attorney Balestracci that he was going to be using substitute trial counsel. Mr. Balestracci is a partner in one of the largest firms in Stockton and has tried cases before on behalf of the church. I suspect he could

adequately prepare for this case in the time remaining, as he has been intimately involved in the case since its inception, and is to this day, still fully engaged in settlement negotiations with the mediator, Jack Williams. He also has multiple associates he can call upon to prepare for trial, along with a similar battalion from your firm.

Please understand that any continuance of the trial date in this matter will be highly prejudicial to the plaintiff/children and will place an unnecessary hardship on plaintiff's counsel. I have gone to substantial difficulty in preparing to temporarily move to the west coast for the month of February in order to try this case. This means not only leaving my family, but also rearranging several matters set for trial here in Massachusetts in order to be available to try this case in California.

Mr. Boskovich also has a very busy trial calendar and has made accommodations to it in order to try this matter in February.

In short, we cannot stipulate to any continuances of this matter and we will politely oppose any motion you file with the court.

You may want to re-read the *Oliveros v. County of Los Angeles* case cited in your letter. I do not think the facts of that case are analogous to this case.

I hope your vacation is going well, and if you wish to discuss this further, please give me a call upon your return. I can be reached at our Falmouth offices listed above.

Best Regards,



George J. MacKoul
SABBAH AND MACKOUL

GJM

CC: Mr. Boskovich Esq.
Mr. Balestracci Esq.
Mr. Coughlin Esq.
Jack Williams Esq.
(All by facsimile and first class mail).

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
2 Sabbah and MacKoul
3 Attorneys and Counselors at Law
4 49 Locust Street
5 Falmouth, Massachusetts 02540
6
7 508-495-4955
8
9 Anthony Boskovich, No. 121198
10 Law Offices of Anthony Boskovich
11 28 N. First Street, 6th Floor
12 San Jose, California 95113-1210
13
14 408-286-5150
15 Attorneys for Plaintiffs

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ROSA JURNELO, CLERK
Paralela

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
15 in her capacity as Guardian ad Litem for
16 RACHEL LOMAS and AMBER LOMAS,
17 *Plaintiffs,*
18 v.
19 FATHER JOSEPH ILLO; FATHER FRANCIS
20 JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
21 FATHER RICHARD RYAN; BISHOP STEVEN
22 BLAIRE; THE DIOCESE OF STOCKTON;
23 DOES 1 through 100,
24 *Defendants.*

No. CV 018440
DECLARATION OF ANTHONY
BOSKOVICH IN OPPOSITION
TO MOTION FOR
CONTINUANCE
Date: 2 February 2005
Time: 9:00 A.M.
Department: 41
Judge: Hon. Elizabeth Humphreys
Action Filed: 10 September 2001
Trial Date: 22 February 2005

22 Anthony Boskovich declares:

24 1. I am an attorney at law admitted to practice before all courts in this state and am one of
25 the attorneys of record for plaintiffs in this matter.

1 2. I attended the case management conference in this case on 1 July 2004 by telephone in
2 which the trial date in this matter was retained from the prior setting. At that conference, Paul
3 Balestracci, counsel for defendants Illo, Ryan, Blaire, and Diocese of Stockton, stated that he would
4 be trial counsel for those defendants and that he was able to try the case and available on those dates.
5 At that conference I stated that plaintiffs definitely wanted the trial to proceed on that date, and Mr.
6 Balestracci indicated his willingness to abide by the date.

7
8 3. A mediation in this case was held on 29 November 2004. Mr. Balestracci attended that
9 mediation. At no time did Mr. Balestracci inform me or Mr. MacKoul that new trial counsel would
10 be retained. In a conversation during early January 2005 Mr. Balestracci informed me that he was
11 told at the mediation that new trial counsel would be associated.

12
13 4. Despite the fact that Mr. Kozina was associated on 1 December 2004, I did not receive
14 notice of this fact until 16 December 2004. When I asked Mr. Balestracci why the association had
15 not been filed or served before that date, he had no explanation.

16
17 5. The first communication that I received from Mr. Kozina in this matter was his request
18 to continue the trial due to a conflict on or about 28 December 2004. At the time, I was at a soccer
19 tournament with my son in Irvine and unable to respond to him.

20
21 6. I had a discussion with Mr. MacKoul, and both he and I agreed that we would not
22 entertain a continuance at this late date because of the hardship it would place on our clients and
23 our individual practices, and because of the extreme lateness of the request and the fact that Mr.
24 Kozina was so new to the case.

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 7. I am a sole practitioner with one secretary, and I have an extremely heavy litigation
2 practice. Because of this, it is critical that I manage my calendar very carefully. In this case, I
3 cleared my calendar for the week of 17 January 2005 to complete discovery. Both Mr. MacKoul
4 and I were ready, willing, and able to complete the discovery during that week, but as defendants
5 had done many times before, they cancelled their depositions at the last minute and are refusing to
6 attend the depositions plaintiffs have noticed. This causes an extreme hardship for me because I am
7 now forced to attempt to juggle an already tight calendar.

8
9 8. I face the same prospect for the weeks of trial in this matter. In July 2004, I blocked out
10 the trial weeks in this case, and have scheduled other matters around those dates. I have had to
11 refuse cases because of conflicts with the trial in this case. Should the trial in this matter be
12 continued, it will be difficult for me to fill those weeks with paying work at this late date.

13
14 9. Attached hereto as Exhibit A is a true and correct copy of this court's Register of Actions
15 in the case of *Gruz v. Khaschuk*, case number CV015525, which I downloaded from this court's
16 website on the afternoon of 18 January 2005. At page 17 of the docket, it indicates that the trial in
17 that case was set on 3 December 2004, and the remainder of the docket indicates no further action
18 regarding any attempt to change that date on the part of any counsel.

19
20 10. Attached hereto as Exhibit B is a true and correct copy of portions of the deposition of
21 Bishop Stephen Blaire taken on 5 October 2004 in Stockton, California.

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23 //
24 //
25 //
26 //

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

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11. Attached hereto as Exhibit C are true and correct copies of portions of the preliminary finding in the canonical investigation of defendant Father Joseph Illo, indicating a preliminary finding of misconduct on the part of Father Illo.

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

Dated: 19 January 2005



Anthony Boskovich



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Register of Actions

Case No.	CV015525	Case Status	ACTV
Case Type	CV	Status Date	01/01/1900
Date Filed	10/24/2001	Description	PI/PDAWD - Auto
Case Name	FRANCISCO CRUZ ET AL VS VIKTOR KHASHCHUK ET AL		
Date	Action		
10/24/2001	INITIAL PETITION/COMPLAINT FILED		
10/24/2001	CIVIL CASE COVER SHEET		
10/24/2001	STATUS CONFERENCE		
10/26/2001	PETITION FOR APPT OF GAL AND ORDER THEREON		
11/01/2001	PETITION FOR APPT OF GAL AND ORDER THEREON		
01/08/2002	PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DEFT (VALERY TUTELYA) DEFT (TVN TRANSI S&C, NOTICE OF SC		
01/30/2002	ANSWER DOCUMENT RECEIVED FROM ** DEFT (VALERY TUTELYA)		
01/25/2002	PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DEFT (CITY OF TRACY) BY SERVING MARGAI - S&C, NOTICE OF SC, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM AND ORTER THER		
01/25/2002	PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DEFT (COUNTY OF SAN JOAQUIN) BY SERVING WELLS - S&C, NOTICE OF SC, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM AND ORDE		
01/25/2002	PROOF OF SERVICE DOCUMENT RECEIVED FOR ** MINR (STATE OF CALIFORNIA) BY SERVING L SEATON - S&C, NOTICE OF SC, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM AND ORD		
01/28/2002	PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DEFT (VIKTOR KHASHCHUK) - S&C, NOTICE (FOR APPOINTMENT OF GUARDIAN AD LITEM AND ORDER THEREON		
01/28/2002	DECLARATION OF DILIGENCE DEFT (VIKTOR KHASHCHUK)		
01/20/2002	PROOF OF SERVICE BY MAIL DEFT (VIKTOR KHASHCHUK)		
01/29/2002	ANSWER DOCUMENT RECEIVED FROM ** DEFT (CITY OF TRACY)		
01/30/2002	ANSWER DOCUMENT RECEIVED FROM ** DEFT (VALERY TUTELYA) DBA DEFT (TVN TRANSPORT		
02/01/2002	CROSS COMPLAINT FILED BY DEFT (CITY OF TRACY)		
02/14/2002	ANSWER DOCUMENT RECEIVED FROM ** DEFT (COUNTY OF SAN JOAQUIN)		
02/14/2002	CROSS COMPLAINT FILED BY DEFT (COUNTY OF SAN JOAQUIN)		
02/21/2002	ANSWER DOCUMENT RECEIVED FROM ** STATE OF CALIFORNIA		
01/22/2002	APPLICATION FOR LIEN		
02/27/2002	STATUS CONFERENCE QUESTIONNAIRE MINR (STATE OF CALIFORNIA)		
01/22/2002	REQUEST FOR SPECIAL NOTICE CLMT (MID-CENTURY INSURANCE COMPANY)		
03/14/2002	STATUS CONFERENCE QUESTIONNAIRE DEFT (CITY OF TRACY)		
03/15/2002	STATUS CONFERENCE QUESTIONNAIRE DEFT (TVN TRANSPORTATION)		
03/15/2002	STATUS CONFERENCE QUESTIONNAIRE DEFT (VALERY TUTELYA)		
03/18/2002	STATUS CONFERENCE QUESTIONNAIRE PLTF (MARIA LUISA FRAUSTO DE CRUZ)		
03/18/2002	STATUS CONFERENCE QUESTIONNAIRE PLTF (JUAN RAMOS CRUZ)		

03/18/2002 STATUS CONFERENCE QUESTIONNAIRE PLTF (ANTONIA CRUZ)
03/18/2002 STATUS CONFERENCE QUESTIONNAIRE PLTF (CONNIE CRUZ)
03/18/2002 STATUS CONFERENCE QUESTIONNAIRE PLTF (FRANCISCO CRUZ)
03/18/2002 STATUS CONFERENCE QUESTIONNAIRE DEFT (COUNTY OF SAN JOAQUIN)
03/15/2002 ANSWER DOCUMENT RECEIVED FROM ** DEFT (VIKTOR KHASHCHUK)
03/20/2002 MO: CASE MANAGEMENT CONFERENCE HELD
03/20/2002 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 07/19/2002
03/21/2002 NOTICE OF HEARING
03/15/2002 NOTICE OF ASSOCIATION OF ATTORNEYS PLTF (MARIA LUISA FRAUSTO DE CRUZ)
03/15/2002 NOTICE OF ASSOCIATION OF ATTORNEYS PLTF (ANTONIA CRUZ) PLTF (JUAN RAMOS CRUZ)
03/15/2002 NOTICE OF ASSOCIATION OF ATTORNEYS PLTF (ANTONIA CRUZ)
03/15/2002 NOTICE OF ASSOCIATION OF ATTORNEYS PLTF (CONNIE CRUZ)
03/15/2002 NOTICE OF ASSOCIATION OF ATTORNEYS PLTF (FRANCISCO CRUZ)
04/08/2002 ANSWER DOCUMENT RECEIVED FROM ** DEFT (AMERICOLD TRANSPORTATION)
04/15/2002 CROSS COMPLAINT FILED BY DEFT (AMERICOLD TRANSPORTATION)
04/15/2002 COPY OF SUMMONS ISSUED
04/24/2002 ANSWER TO X-COMPLAINT RECEIVED FROM ** DEFT (STATE OF CALIFORNIA)
04/30/2002 ANSWER TO X-COMPLAINT RECEIVED FROM ** DEFT (COUNTY OF SAN JOAQUIN)
05/09/2002 AMENDED TO X-COMPLAINT FILED DEFT (CITY OF TRACY)
05/14/2002 ANSWER TO X-COMPLAINT RECEIVED FROM ** DEFT (AMERICOLD TRANSPORTATION)
06/05/2002 ANSWER TO X-COMPLAINT OF AMERICOLD TRANSPORTATION RECEIVED FROM ** DEFT (VALER
DBA DEFT (TVN TRANSPORTATION) DEFT (VIKTOR KHASHCHUK)
06/05/2002 ANSWER TO X-COMPLAINT OF CITY OF TRACY RECEIVED FROM ** DEFT (VALERY TUTELYA) DB,
TRANSPORTATION) DEFT (VIKTOR KHASHCHUK)
06/05/2002 ANSWER TO X-COMPLAINT OF COUNTY OF SAN JOAQUIN RECEIVED FROM ** DEFT (VALERY TU
DEFT (TVN TRANSPORTATION) DEFT (VIKTOR KHASHCHUK)
06/10/2002 ANSWER TO 1ST AMEN. X-COMPLAINT OF CITY OF TRACY RECEIVED FROM ** DEFT (VIKTOR KH
07/01/2002 ANSWER TO 1ST AMND. X-COMPLAINT OF CITY OF TRACY RECEIVED FROM ** PLTF (FRANCISCO
(CONNIE CRUZ)
07/01/2002 ANSWER TO X-COMPLAINT OF COUNTY OF SAN JOAQUIN RECEIVED FROM ** PLTF (FRANCISCO
(CONNIE CRUZ)
07/02/2002 ANSWER TO X-COMPLAINT OF AMERICOLD TRANSPORTATION RECEIVED FROM ** DEFT (CITY C
07/05/2002 CASE MANAGEMENT STATEMENT PLTF (FRANCISCO CRUZ) PLTF (CONNIE CRUZ)
07/10/2002 STATUS CONFERENCE QUESTIONNAIRE DEFT (CITY OF TRACY)
07/12/2002 STATUS CONFERENCE QUESTIONNAIRE PLTF (FRANCISCO CRUZ) PLTF (CONNIE CRUZ) PLTF (A
PLTF (MARIA LUISA FRAUSTO DE CRUZ) PLTF (JUAN RAMOS CRUZ)
07/12/2002 CASE MANAGEMENT STATEMENT DEFT (AMERICOLD TRANSPORTATION)
07/17/2002 STATUS CONFERENCE QUESTIONNAIRE DEFT (COUNTY OF SAN JOAQUIN)
07/18/2002 CASE MANAGEMENT STATEMENT
07/19/2002 MO: CASE MANAGEMENT CONFERENCE HELD
07/19/2002 SETTLEMENT CONFERENCE
07/22/2002 NOTICE OF HEARING
07/19/2002 JURY TRIAL ASSIGNMENT

07/22/2002 NOTICE OF HEARING

12/05/2002 NOTICE OF UNAVAILABILITY OF COUNSEL FROM 12/20-1/6/03 PLTF'S (FRANCISCO CRUZ), (CONN (ANTONIA CRUZ), (JUAN RAMOS CRUZ)& (MARIA LUISA FRAUSTO DE CRUZ)

01/17/2003 REQUEST FOR ENTRY OF DISMISSAL FILED AND ENTERED W/O PREJ AS TO DEFT (STATE OF CA ONLY)

01/17/2003 STATUS OF STATE OF CALIFORNIA CHANGED TO DISM

02/27/2003 NOTICE OF MOTION TO CONTINUE TRIAL DATE.

02/27/2003 PROOF OF SERVICE

02/27/2003 DECLARATION OF MAX STEINHEIMER IN SUPPORT OF MOTION TO CONTINUE TRIAL DATE AND CONFERENCE

02/27/2003 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO CONTINUE TRIAL DATE AND SETTLEMENT CONFERENCE

02/27/2003 NOTICE OF MOTION TO CONTINUE TRIAL DATE AND SETTLEMENT CONFERENCE

02/26/2003 ORDER GRANTING EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION TO CONTINUE TRIAL DATE AND SETTLEMENT CONFERENCE SIGNED BY JUDGE HUMPHREYS

02/28/2003 JOINDER IN MOTION TO CONTINUE TRIAL DATE

03/03/2003 MO: OTHER PREDISPOSITION HEARING HELD, MOTION TO CONTINUE TRIAL IS GRANTED.

03/04/2003 STIPULATED CONTINUANCE NEW HEARING DATE: 09/08/2003

03/04/2003 MO: HEARING CONTINUED NEW HEARING DATE: 08/25/2003

06/10/2003 NOTICE OF HEARING

03/04/2003 NOTICE OF BANKRUPTCY FILED BY DEFT (VALERY TUTELYA) DEFT (TVN TRANSPORTATION)

03/05/2003 STATUS OF VALERY TUTELYA CHANGED TO STAY

03/05/2003 STATUS OF TVN TRANSPORTATION CHANGED TO STAY

04/17/2003 ROE AMENDMENT TO CROSS COMPLAINT FOR INDEMNITY CONTRIBUTION AND DECLARATORY RELIEF

05/29/2003 ROE AMENDMENT TO CROSS-COMPLAINT FOR INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF

06/02/2003 ANSWER TO X-COMPLAINT FILED BY COUNTY OF SAN JOAQUIN RECEIVED FROM **CRDF (ADVANTAGE SYSTEMS INC)

06/02/2003 DEFT ADVANTAGE SYSTEMS IN CODE OF CIVIL PROCEDURE 170.6 CHALLENGE

06/02/2003 CROSS COMPLAINT FILED BY ADVANTAGE SYSTEMS INC

05/29/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR **CRDF (ADVANTAGE SYSTEMS INC) BY SEIRIS R MEISNER, SUMMONS ON X-COMPLAINT, ROE AMENDMENT TO X-COMPLAINT FOR INDEMNITY, CONTRIBUTION & DECLARATORY RELIEF

05/29/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR **CRDF (ADVANTAGE TRANSPORT INC) BY SEIRIS R MEISNER, SUMMONS ON X-COMPLAINT, ROE AMENDMENT TO X-COMPLAINT FOR INDEMNITY, CONTRIBUTION & DECLARATORY RELIEF

05/29/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR **CRDF (ADVANTAGE SYSTEMS INC OF IOWA) BY SEIRIS R MEISNER, SUMMONS ON X-COMPLAINT, ROE AMENDMENT TO X-COMPLAINT FOR INDEMNITY, CONTRIBUTION & DECLARATORY RELIEF

05/29/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR **CRDF (ADVANTAGE MANAGEMENT CORP) BY SEIRIS R MEISNER, SUMMONS ON X-COMPLAINT, ROE AMENDMENT TO X-COMPLAINT FOR INDEMNITY, CONTRIBUTION & DECLARATORY RELIEF

05/29/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR **CRDF (ADVANTAGE TRANSPORTATION INC) BY SEIRIS R MEISNER, SUMMONS ON X-COMPLAINT, ROE AMENDMENT TO X-COMPLAINT FOR INDEMNITY, CONTRIBUTION & DECLARATORY RELIEF

06/06/2003 170.6 HUMPHREYS NEW HEARING DATE: 08/25/2003

06/06/2003 170.6 HUMPHREYS NEW HEARING DATE: 08/25/2003

06/06/2003 170.6 HUMPHREYS NEW HEARING DATE: 09/08/2003

06/10/2003 NOTICE OF HEARING

06/11/2003 AMENDED ANSWER TO X-COMPLAINT FILED BY COUNTY OF SAN JOAQUIN RECEIVED FROM ** ADVANTAGE SYSTEMS INC AKA ADVANTAGE SYSTEMS OF IOWA INC

06/16/2003 NOTICE OF UNAVAILABILITY OF COUNSEL FROM 8/4/03-9/3/03[CRCO] ADVANTAGE SYSTEMS INC

06/16/2003 ANSWER TO X-COMPLAINT FILED BY ADVANTAGE SYSTEMS INC RECEIVED FROM ** CRDF (AME TRANSPORTATION)

06/16/2003 AMENDED SUMMONS ON X-COMPLAINT FILE BY AMERICOLD TRANSPORTATION

06/16/2003 FIRST AMENDED ON X-COMPLAINT FILED BY AMERICOLD TRANSPORTATION FILED

06/18/2003 ANSWER TO X-COMPLAINT RECEIVED FROM ** CRDF (CONNIE CRUZ) CRDF (FRANCISCO CRUZ)

06/19/2003 ROE AMENDMENT TO CRCMPLT FOR TOTAL OR PARTIAL INDEMNITY AND CONTRIBUTION

06/23/2003 ANSWER TO X-COMPLAINT FILED BY COUNTY OF AMERICOLD RECEIVED FROM ** CRDF (AMERI TRANSPORTATION)

06/26/2003 EX PARTE; NO ONE PRESENT; MATTER DROPPED

06/26/2003 EX PARTE HEARING HELD RE: MOTION--MATTER DROPPED

06/27/2003 ANSWER TO X-COMPLAINT FILED BY CITY OF TRACY RECEIVED FROM ** CRDF (ADVANTAGE SY

06/27/2003 ANSWER TO X-COMPLAINT FILED BY COUNTY OF SAN JOAQUIN RECEIVED FROM ** CRDF (ADV/ TRANSPORT INC) CRDF (ADVANATAGE MANAGEMENT CORP)

06/27/2003 CROSS COMPLAINT FILED BY ADVANTAGE TRANSPORTATION, ADVANTAGE MANAGEMENT INC

06/30/2003 DEFT ADVANTAGE SYSTEMS INC'S NOTICE OF MOTION TO CONTINUE TRIAL DATE AND SETTLEI CONFERENCE DATE

06/30/2003 DECLARATION OF VLADIMIR F. KOZINA IN SUPPORT OF MOTION TO CONTINUE TRIAL.

06/30/2003 POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO CONTINUE TRIAL DATE AND SETTLEMEI CONFERENCE DATE.

07/07/2003 ANSWER TO 1ST AMENDED COMPLAINT RECEIVED FROM ** CRDF (CITY OF TRACY)

07/09/2003 AMENDED COMPLAINT FILED CRCO (ADVANTAGE SYSTEMS INC)

07/09/2003 ANSWER TO ADVANTAGE SYSTEMS X-COMPLAINT RECEIVED FROM ** CRDF (TVN TRANSPORT/ (VALERY TUTELYA) CRDF (VIKTOR KHASCHCHUK)

07/11/2003 [DEFT] CITY OF TRACY; NON-OPPOSITION TO MOTION TO CONTINUE TRIAL; DECLARATION OF M HAZELWOOD IN SUPPORT THEREOF

07/11/2003 DECLARATION OF MARK F HAZELWOOD IN SUPPORT OF MOTION TO CONTINUE TRIAL

07/14/2003 DECLARATION OF THOMAS C KNOWLES IN OPPOSITION TO MOTION OF ADVANTAGE SYSTEMS CONTINUE TRIAL AND SETTLEMENT CONFERENCE DATS

07/14/2003 DECLARATION OF R. LEWIS VAN BLOIS IN SUPPORT OF PLTF'S OPPOSITION TO DEFT'S MOTION

07/14/2003 PLTF'S OPPOSITION TO DEFT'S MOTION TO CONTINUE TRIAL DATE AND SETTLEMENT CONFERI

07/14/2003 DECLARATION OF CONNIE CRUZ IN SUPPORT OF PLTF'S OPPOSITION TO MOTION TO CONTINUI

07/14/2003 [DEFT] COUNTY OF SAN JOAQUIN; STATEMENT OF NON-OPPOSITION TO ADVANTAGE SYSTEMS CONTINUE TRIAL

07/14/2003 ANSWER DOCUMENT RECEIVED FROM ** DEFT ADVANTAGE SYSTEMS INC AKA ADVANTAGE SY IOWA INC, ADVANTAGE MANAGEMENT CORPORATION INC & ADVANTAGE TRANSPORTATION IN

07/14/2003 PLTF'S N/M & MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES & REQUESTS FOI IDENTIFICATION & PRODUCTION OF DOCUMENTS; MEMO OF P & A'S; REQUEST FOR SANCTION!

07/14/2003 DECLARATION OF R. LEWIS VAN BLOIS IN SUPPORT OF MOTION TO COMPEL RESPONSES TO F INTERROGATORIES & REQUESTS FOR IDENTIFICATION AND PRODUCTION OF DOCUMENTS.

07/16/2003 DECLARATION OF ROBERT C RODRIGUEZ IN SUPPORT OF REPLY TO OPPOSITION TO MOTION TRIAL

07/16/2003 DECLARATION OF VLADIMIR F KOZINA IN RESPONSE TO PLTF'S OPPOSITION TO THE MOTION TO TRIAL OF DEFT'S

07/16/2003 DEFT'S RESPONSE TO OPPOSITION TO MOTION TO CONTINUE TRIAL

07/18/2003 DECLARATION OF RALPH R NEVIS IN SUPPORT OF DEFT'S REPLY TO PLTF;'S OPPOSITION TO M CONTINUE TRIAL AND SETTLEMENT CONFERENCE

07/18/2003 [DEFT] COUNTY OF SAN JOAQUIN; REPLY TO PLTF'S OPPOSITION TO MOTION TO CONTINUE TR SETTLEMENT CONFERENCE

07/21/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DOE 10 TRUE NAME I & R BY SERVING SCOT S&C, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER THEREON, NOTICE OF AS ATTY'S, NOTICE SETTLEMENT CONF, NOTICE OF TRIAL

07/21/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DOE 8 TRUE NAME ADVANTAGE MANAGEME SERVING IRIS MEISNER, S&C, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER 1 NOTICE OF ASSOCIATION OF ATTY'S, NOTICE SETTLEMENT CONF, NOTICE OF TRIAL

07/21/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DOE 9 TRUE NAME ADVANTAGE TRANSPORT SERVING IRIS MEISNER, S&C, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER 1 NOTICE OF ASSOCIATION OF ATTY'S, NOTICE SETTLEMENT CONF, NOTICE OF TRIAL

07/21/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DOE 7 TRUE NAME ADVANTAGE SYUSTEMS IRIS MEISNER, S&C, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER THEREON, ASSOCIATION OF ATTY'S, NOTICE SETTLEMENT CONF, NOTICE OF TRIAL

07/21/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DOE 6 TRUE NAME ADVANTAGE TRANSPORT SERVING IRIS MEISNER, S&C, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER 1 NOTICE OF ASSOCIATION OF ATTY'S, NOTICE SETTLEMENT CONF, NOTICE OF TRIAL

07/21/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR **DOE 5, TRUE NAME ADVANTAGE SYSTEMS IN IRIS MEISNER, S&C, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER THEREON, ASSOCIATION OF ATTY'S, NOTICE SETTLEMENT CONF, NOTICE OF TRIAL

07/22/2003 PROOF OF SERVICE

07/22/2003 DECLARATION OF MARK F. HAZELWOOD IN SUPPORT OF MOTION TO COMPEL LIFE CARE PLAN

07/22/2003 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL LIFE CARE INTERVIEW.

07/22/2003 DEFT CITY OF TRACY'S N/M & MOTION TO COMPEL LIFE CARE PLAN INTERVIEW; MEMO OF P & / MARK F. HAZELWOOD IN SUPPORT THEREOF.

07/22/2003 ANSWER TO FIRST AMENDED X-COMPLAINT FILED BY AMERICOLD'S RECEIVED FROM ** CRDF (SAN JOAQUIN)

07/25/2003 MO: HEARING CONTINUED NEW HEARING DATE: 08/21/2003

07/29/2003 PLTF'S' OPPOS TO DEFT CITY OF TRACY'S MOTION TO COMPEL LIFE CARE PLAN INTERVIEW

07/29/2003 DECLARATION OF R. LEWIS VAN BLOIS IN SUPP OF PLTF'S' OPPOS TO DEFT'S MOTION TO COMPEL LIFE CARE PLAN INTERVIEW

07/30/2003 ANSWER TO AMENDED X-COMPLAINT RECEIVED FROM **[CRDF] FRANCISCO CRUZ:[CRDF] CON

07/31/2003 DROP CITY OF TRACY'S MOTION TO COMPEL LIFE CARE PLAN INTERVIEW PER ATTY HAZELWOOD HAS COME TO LIGHT & MOTION WILL BE REFILED AT ANOTHER TIME.

07/14/2003 PLTF'S MOTION TO COMPEL RESPONSES TO FORM INTERROGATORIES & REQUESTS FOR IDEN PRODUCTION OF DOCUMENTS; REQUEST FOR SANCTIONS

08/08/2003 MO: HEARING FOR PLTF'S MOTION TO COMPEL CONTINUED ON PARTY'S MOTION NEW HEARING 08/26/2003

08/11/2003 NOTICE OF HEARING

08/05/2003 STIPULATION AND ORDER FOR CONTINUANCE OF MOTION TO COMPEL HEARING SIGNED BY JL

08/15/2003 DECLARATION OF GREGORY J. ROCKWELL IN OPPOSITION TO PLTF'S MOTION TO COMPEL DISC RESPONSES AND REQUEST FOR SANCTIONS

08/14/2003 ANSWER DOCUMENT RECEIVED FROM[CRDF] AMERICOLD TRANSPORTATION;

08/19/2003 SUPPLEMENTAL DECLARATION OF GREGORY J. ROCKWELL IN OPPOSITION TO PLTF'S MOTION DISCOVERY RESPONSES AND REQUEST FOR SANCTIONS

08/19/2003 NOTICE OF BANKRUPTCY FILED BY[CRDF] VICTOR KHASCHUK; [CRDF] VALERY TUTELYA; [CRDF] TRANSPORTATION;

08/21/2003 JURY TRIAL ASSIGNMENT ADVANCED & VACATED PER MO OF 8/21/03.

08/21/2003 SETTLEMENT CONFERENCE IS ADVANCED & VACATED PER MO OF 8/21/03.

08/21/2003 SETTLEMENT CONFERENCE

08/27/2003 NOTICE OF HEARING

08/21/2003 JURY TRIAL ASSIGNMENT

08/27/2003 NOTICE OF HEARING

08/22/2003 DROP PLTF'S MOTION TO COMPEL PER REQUEST OF ATTY VAN BLOIS; DEFT PROVIDED RESPO (GOLDENROD)

08/20/2003 DEFT ADVANTAGE SYSTEMS, INC. SECOND AMENDED CR/COMPLAINT FOR BREACH OF CONTR. INDEMNITY, CONTRIBUTION AND DECLARATORY RELIEF

08/26/2003 MO: PLTF'S MOTION TOA COMPEL DROPE PER REQUEST OF COUNSEL. (NO FILE - MO ONLY)

09/04/2003 CERTIFICATE OF SERVICE BY MAIL SUMMONS, ROE AMENDMENT TO CROSS COMPLAINT, CROSS MAILED ROBERT MEISNER ON 08-29-03

09/04/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR SUMMONS, CROSSCOMPLAINT, ROE AMENDMI COMPLAINT SERVED[CRDF] I & R; ON 06-03-03

09/05/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR SUMMONS, CROSS COMPLAINT, SERVED DC T THRU IRENA PARFENOV CO-OWNER ON 08-28-03

09/05/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR SOMMONS, CROSS COMPLAINT, SERVED IGOF THRU IRENA PARFENOV ON 08-28-03

08/25/2003 AMENDED ANSWER DOCUMENT RECEIVED FROM ** ADVANTAGE SYSTEMS INC, DBA ADVANTAGE IOWA INC,ADVANTAGE MANAGEMENT CORP, ADVANTAGE TRANSPORATION INC

09/05/2003 ANSWER TO X-COMPLAINT FILED BY ADVANTAGE SYSTEMS INC'S 2ND AMENDED X-COMPLAINT FROM **[CRDF] CITY OF TRACY;

08/21/2003 MO: OTHER PREDISPOSITION HEARING HELD

09/12/2003 ANSWER TO 2ND AMENDED COMPLAINT RECEIVED FROM **[CRDF] FRANCISCO CRUZ;[CRDF] C

09/23/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DOE 10, IGOR PARFENOV DBA DC TRANSPO RONALD C CHAUVEL, S&C, NOTICE OF ASSOCIATION OF ATTYS, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER THEREON, NOTICE OF TRIAL & MANDATORY SETTLEMENT CONF

09/23/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DOE 11, DC TRANSPORT, BY SERVING RONALD C CHAUVEL, S&C, NOTICE OF ASSOCIATION OF ATTYS, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER THEREON, NOTICE OF TRIAL & MANDATORY SETTLEMENT CONF

09/23/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** DOE 11 DC TRANSPORT, BY SERVING IGOR PARFENOV, S&C, NOTICE OF ASSOCIATION OF ATTYS, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER THEREON, NOTICE OF TRIAL & MANDATORY SETTLEMENT CONF

09/23/2003 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** IGOR PARFENOV DBA DC TRANSPORT SUEE NOTICE OF ASSOCIATION OF ATTYS, PETITION FOR APPOINTMENT OF GUARDIAN AD LITEM & ORDER THEREON, NOTICE OF TRIAL & MANDATORY SETTLEMENT CONF

10/20/2003 ANSWER DOCUMENT RECEIVED FROM **[CRDF] IGOR PARFENOV;[DBA] DC TRANSPORT;

10/29/2003 CROSS COMPLAINT [DEFT] CITY OF TRACY;

10/29/2003 SUMMONS ISSUED

10/27/2003 ROE AMENDMENT TO X-COMPLAINT FILED BY [DEFT] COUNTY OF SAN JOAQUIN;

11/03/2003 SUMMONS ISSUED

11/03/2003 AMENDED CROSS COMPLAINT FOR INDEMNITY CONTRIBUTION AND DECLARATORY RELIEF

11/12/2003 ANSWER DOCUMENT RECEIVED FROM **I & R INC SUED AS DOE 10

11/13/2003 NOTICE OF CHANGE OF ADDRESS[DEFT] VALERY TUTELYA:[DEFT] TVN TRANSPORTATION:[CRD KHASCHUK;

11/21/2003 ANSWER TO CROSS COMPLAINT BY[CRDF] I & R;

11/26/2003 ANSWER DOCUMENT RECEIVED FROM **[CRDF] IGOR PARFENOV; [DBA] DC TRANSPORT; AS TC COMPLAINT OF CITY OF TRACY

11/18/2003 DEFT CITY OF TRACY'S N/M & MOTION TO COMPEL LIFE CARE PLAN INTERVIEW & REHABILITAT EVALUATION; MEMO OF P & A'S; & DECL OF MARK F. HAZELWOOD IN SUPPORT THEREOF.

11/18/2003 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL LIFE CARE INTERVIEW & REHABILITATION MEDICINE EVALUATION.

11/18/2003 DECLARATION OF MARK F. HAZELWOOD IN SUPPORT OF MOTION TO COMPEL LIFE CARE PLAN REHABILITATION MEDICINE EVALUATION.

11/25/2003 DEFT/CROSS-COMPLAINANT CO OF SJ'S JOINDER IN MOTION TO COMPEL LIFE CARE PLAN INTE REHABILITATION MEDICINE EVALUATION.

12/02/2003 ANSWER DOCUMENT RECEIVED FROM **[CRDF] IGOR PARFENOV;[DBA] DC TRANSPORT; TO CR COMPLAINT OF[CRCO] COUNTY OF SAN JOAQUIN;

12/01/2003 PLTF'S OPPOSITION TO DEFT CITY OF TRACY'S MOTION TO COMPEL LIFE CARE PLAN INTERVIE

12/01/2003 DECLARATION OF R. LEWIS VAN BLOIS

12/02/2003 [CRCO] ADVANTAGE SYSTEMS INC;[CRDF] ADVATAGE SYSTEMS INC OF IOWA;[CRCO] ADVANTA TRANSPORTATION INC;[CRCO] ADVANTAGE MANAGEMENT INC; JOINDER IN MOTION TO COMPE PLAN INTERVIEW AND REHABILITATION MEDICINE EVALUATION

12/05/2003 DEFTS ADVANTAGE'S NOTICE OF MOTION FOR SUMMARY JUDGMENT; MEMO OF P & A'S IN SUP THEREOF.

12/05/2003 SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS.

12/05/2003 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFT'S MOTION FOR SUMMARY .

12/05/2003 EVIDENCE IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT.

12/05/2003 REPLY BRIEF IN SUPPORT OF MOTION TO COMPEL LIFE CARE PLAN INTERVIEW AND REHABILIT MEDICINE EVALUATION.[DEFT] CITY OF TRACY;

12/08/2003 PROOF OF SERVICE RE MOTION FOR SUMMARY JUDGMENT[CRCO] ADVANTAGE SYSTEMS INC;

12/09/2003 TENTATIVE RULING - DEFT CITY OF TRACY'S MOTION TO COMPEL GRANTED. SCOPE OF PROPC DIFFERENT THAN PREVIOUS MEDICAL EXAMS.

12/10/2003 MO: OTHER PREDISPOSITION HEARING HELD. DEFT CITY OF TRACY'S M/COMPEL GRANTED. SC PROPOSED EXAM IS DIFFERENT THAN PREVIOUS MEDICAL EXAMS.

12/31/2003 ROE AMENDED TO X-COMPLAINT FILED BY CITY OF TRACY,

12/05/2003 JOINDER OF DEFT IGOR PARFENOV, IND & DBA DC TRANSPORT(ALSO NAMED AS DC TRANSPOR FOR SUMMARY JMT FILED BY DEFT ADVANTAGE SYSTEMS, INC.

12/05/2003 DECLARATION OF GREGORY W. KOONCE IN SUPPORT OF DEFT PARFENOV (DC TRANSPORT)'S MOTION FOR SUMMARY JUDGMENT.

12/05/2003 SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF DEFT PARFENOV'S TRANSPORT'S) JOINDER IN MOTION FOR SUMMARY JUDGMENT.

12/05/2003 DECLARATION OF ANDREW RAMANOV IN SUPPORT OF JOINDER OF IGOR PARFENOV, DBA DC T (ALSO SUED AS DC TRANSPORT) IN MOTION FOR SUMMARY JUDGMENT.

01/02/2004 DEFTS PARFENOV & DC TRANSPORT'S N/M & MOTION TO CONTINUE TRIAL, OR IN THE ALTERN/ SEVER TRIAL OF THE COMPLAINT AND CROSS-COMPLAINTS AGAINST PARFENOV

01/02/2004 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFT PARFENOV'S MOTION TO C TRIAL, OR IN THE ALTERNATIVE, TO SEVER TRIAL OF THE COMPLAINT & CROSS-COMPLAINTS A PARFENOV.

DECLARATION OF GREGORY W. KOONCE IN SUPPORT OF MOTION TO CONTINUE TRIAL, OR IN "

01/02/2004 ALTERNATIVE, TO SEVER TRIAL OF THE COMPLAINT & CROSS-COMPLAINTS AGAINST PARFENC

01/13/2004 [CRCO] ADVANTAGE SYSTEMS INC, ETC. STATEMENT OF NON-OPPOSITION TO IGOR PARFENOV TRANSPORT'S MOTION TO CONTINUE TRIAL.

01/16/2004 DEFT CITY OF TRACY'S NON-OPPOSITION TO IGOR PARFENOV AND DC TRANSPORT'S MOTION TRIAL.

01/16/2004 DECLARATION OF MARK F. HAZELWOOD IN SUPPORT OF NON-OPPOSITION TO MOTION TO CON

01/26/2004 DEFT I&R INC.'S NOTICE OF JOINDER IN DEFT PARFENOV'S MOTION TO CONTINUE TRIAL OR, IN ALTERNATIVE, TO SEVER TRIAL OF THE COMPLT & CROSS-COMPLT AGAINST I&R, INC.

01/26/2004 DECLARATION OF NICOLE BOLSON IN SUPPORT OF JOINDER IN MOTION TO CONTINUE TRIAL O ALTERNATIVE, TO SEVER TRIAL OF THE COMPLT & CROSS-COMPLT AGAINST I&R, INC.

01/26/2004 JOINDER OF DEFT IGOR PARFENOV, NAMED IND & DBA DC TRANSPORT(ALSO NAMED AS DC TR MOTION TO BIFURCATE TRIAL FILED BY DEFT CITY OF TRACY.

01/22/2004 DEFT CITY OF TRACY'S N/M & MOTION TO BIFURCATE TRIAL IN THIS ACTION PURSUANT TO CCP MEMO OF P & A'S & DECL OF MARK HAZELWOOD IN SUPPORT THEREOF.

01/22/2004 DECLARATION OF MARK HAZELWOOD IN SUPPORT DEFT CITY OF TRACY'S MOTION TO BIFURC THIS ACTION PURSUANT TO CCP SECTION 598.

01/22/2004 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFT CITY OF TRACY'S MOTION TRIAL; DECL OF MARK HAZELWOOD IN SUPPORT THEREOF.

01/26/2004 PLTF'S OPPOSITION TO DEFT IGOR PARFENOV'S MOTION TO CONTINUE TRIAL OR IN THE ALTEP SEVER TRIAL

01/26/2004 DECLARATION OF THOMAS C KNOWLES IN OPPOSITION TO MOTION OF IGOR PARFENOV TO CC OR IN THE ALTERNATIVE TO SEVER TRIAL OF COMPLAINT & CROSS COMPLAINTS AGAINST PAR

01/30/2004 DEFT PARFENOV'S REPLY TO PLTF'S OPPOSITION TO MOTION TO CONTINUE TRIAL, OR IN THE. TO SEVER TRIAL OF THE COMPLAINT & CROSS-COMPLAINTS AGAINST PARFENOV.

01/30/2004 DECLARATION OF GREGORY W. KOONCE IN REPLY TO OPPOSITION TO MOTION TO CONTINUE THE ALTERNATIVE, TO SEVER TRIAL OF THE COMPLAINT AND CROSS-COMPLAINTS AGAINST P)

01/30/2004 PROOF OF FACSIMILE SERVICE

02/05/2004 [CRCO] ADVANTAGE SYSTEMS INC; [CRDF] ADVANTAGE SYSTEMS INC; [CRDF] ADVANTAGE TRA [CRDF] ADVATAGE SYSTEMS INC OF IOWA; SETTLEMENT CONFERENCE STATEMENT

02/05/2004 [CRDF] ADVANTAGE SYSTEMS INC; [CRDF] ADVANTAGE TRANSPORT INC; [CRDF] ADVATAGE SY IOWA; [CRDF] ADVANATAGE MANAGEMENT CORP; [CRDF] ADVANTAGE TRANSPORTATION INC; [ADVANTAGE SYSTEMS INC; ADVANTAGE MANAGEMENT'S JOINDER IN MOTION TO BIFURCATE

02/05/2004 DECLARATION OF ROBERT LINDSKOG IN OPPOSITION TO ADVANTAGES' MOTION FOR SUMMAR DEFT PARFENOV'S JOINDER THEREIN

02/05/2004 PROOF OF SERVICE FILED

02/05/2004 DECLARATION OF LEWIS J GRILL IN OPPOSITION TO ADVANTAGE'S MOTION FOR SUMMARY JUI PARFENOV'S JOINDER THEREIN

02/05/2004 DECLARATION OF KENNETH ZIEDMAN PHD IN OPPOSITION TO ADVANTAGE'S MOTION FOR SUM JUDGMENT & DEFT PARFENOV'S JOINDER THEREIN

02/05/2004 PLTF'S OPPOSITION TO DEFT PARFENOV'S DC STRANSPORT SEPARATE STATEMENT OF UNDIS MATERIAL FACTS IN SUPPORT OF JOINDER IN MOTION FOR SUMMARY JUDGMENT

02/05/2004 PLTF'S OPPOSITION TO DEFT ADVAMTAGE SYSTEMS INC'S SEPARTATE STATEMENT FO UNDIS MATERIAL FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

02/05/2004 PLTF'S SEPARATE STATEMENT OF MATERIAL FACTS IN OPPOSITION TO DEFT ADVANTAGES' M SUMMARY JUDGMENT & DEFT PARFENOV'S JOINDER THEREIN

02/05/2004 PLTF'S MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO DEFT ADVANTAGE'S M SUMMARY JUDGMENT & DEFT PARFENOV'S JOINDER THEREIN

02/05/2004 DECLARATION OF THOMAS C KNOWLES IN OPPOSITION TO DEFT ADVANTAGE'S MOTION FOR S JUDGMENT & DEFT PARFENOV'S JOINDER THEREIN

02/04/2004 MO: DEFT'S MOTION TO CONTINUE TRIAL GRANTED. MOTION TO SEVER DENIED. I&R INFORMS ARE WITHDRAWING THEIR JOINDER. STLM 2/17/04 VACATED. CVLA 3/22/04 VACATED.

02/04/2004 VACATE SETTLEMENT CONFERENCE PER MO OF 2/4/04.

02/04/2004 VACATE JURY TRIAL ASSIGNMENT PER MO OF 2/4/04.

02/04/2004 SETTLEMENT CONFERENCE (SPECIAL SET @ 10AM)

02/04/2004 JURY TRIAL ASSIGNMENT

02/05/2004 DEFT CITY OF TRACY'S STATEMENT IN OPPOSITION TO DEFT ADVANTAGE SYSTEM'S SEPARATI OF UNDISPUTED MATERIAL FACTS.

02/05/2004 DEFT CITY OF TRACY'S STATEMENT IN OPPOSITION TO DEFT DC TRANSPORT'S SEPARATE STA UNDISPUTED MATERIAL FACTS.

02/05/2004 DEFT CITY OF TRACY'S OPPOSITION TO ADVANTAGE SYSTEM & DC TRANSPORT'S MOTIONS FC JUDGMENT.

02/05/2004 DECLARATION OF MARK F. HAZELWOOD IN SUPPORT OF OPPOSITION TO ADVANTAGE SYSTEM TRANSPORT'S MOTIONS FOR SUMMARY JUDGMENT.

02/05/2004 CO OF SJ'S RESPONSE TO ADVANTAGE SYSTEMS, INC. SEPARATE STATEMENT OF UNDISPUTE FACTS.

02/05/2004 DEFT/CROSS-COMPLT CO OF SJ'S MEMO OF P & A'S IN OPPOSITION TO ADVANTAGE SYSTEMS, FOR SUMMARY JUDGMENT.

02/05/2004 DECLARATION OF RALPH R. NEVIS IN SUPPORT OF DEFT CO OF SJ'S OPPOSITION TO ADVANTA INC.'S MOTION FOR SUMMARY JUDGMENT.

02/10/2004 PLTFS MEMORANDUM OF POINTS & AUTHORITIES IN OPPOSITION TO MOTION TO BIFURCATE T

02/10/2004 DECLARATION OF R LEWIS VAN BLOIS IN SUPPORT OF PLTFS OPPOSTION TO DEFTS CITY OF T TO BIFURCATE TRIAL

02/11/2004 [DEFT], [CRDF] & [CRCO] AMERICOLD TRANSPORTATION JOINDER IN MOTION TO BIFURCATE TR

02/11/2004 PROOF OF SERVICE DOCUMENT RECEIVED FOR **MCKINLEY & SMITH, BY SERVING CHERYL R (LIST, 02/05/04

02/11/2004 PROOF OF SERVICE DOCUMENT RECEIVED FOR ** MAYALL HURLY, BY SERVING KATHLEEN ENI 02/05/04

02/13/2004 REPLY BRIEF IN SUPPORT OF DEFT CITY OF TRACY'S MOTION TO BIFURCATE TRIAL; FURTHER F. HAZELWOOD IN SUPPORT THEREOF.

02/13/2004 FURTHER DECLARATION OF MARK F. HAZELWOOD IN SUPPORT OF MOTION TO BIFURCATE TRI

02/23/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 02/26/2004 (PER CYNTHIA CALL)

01/27/2004 ORDER GRANTING DEFT CITY OF TRACY'S MOTION TO COMPEL LIFE CARE PLAN INTERVIEW & REHABILITATION MEDICINE EVALUATION SIGNED BY JUDGE SAIERS.

02/26/2004 STIPULATED CONTINUANCE FOR LAW & MOTION NEW HEARING DATE: 03/04/2004

02/20/2004 NOTICE OF ENTRY OF ORDER.

02/19/2004 MO: DEFT ADVANTAGE'S MOTION FOR SUMMARY JUDGMENT DENIED.

02/13/2004 DEFT ADVANTAGE SYSTEMS REPLY TO PLTF'S OPPOSITION TO MOTION FOR SUMMARY JUDGM

02/13/2004 OBJECTIONS TO EVIDENCE OFFERED IN SUPPORT OF DEFT CITY OF TRACY'S OPPOSITION TO I ADVANTAGE SYSTEMS' MOTION FOR SUMMARY JUDGMENT.

02/13/2004 OBJECTIONS TO EVIDENCE OFFERED IN SUPPORT OF PLTFS' OPPOSITON TO DEFT ADVANTAG MOTION FOR SUMMARY JUDGMENT.

02/13/2004 PROOF OF SERVICE

03/04/2004 DEFT OBJECTION TO EXPARTE ORDER REQUIRING ATTENDANCE AT MEDIATION

03/04/2004 MO: ALL THREE MOTION'S GRANTED. COURT ORDERS THAT ALL PARTIES BE PRESENT AT MED OBJECTION OF VLADIMIR KOZINA.

03/08/2004 [DEFT] COUNTY OF SAN JOAQUIN; MEMO OF P & A'S IN SUPPORT OF ORDER COMPELLING ATTE MEDIATION - EX PARTE HEARING.

03/05/2004 RESPONSIVE DECLARATION TO OSC & CHALLENGE TO COURT'S ORDER TO MEDIATE

03/05/2004 DECLARATION OF VLADIMIR F KOZINA IN SUPPORT OF RESPONSE TO OSC AND CHALLENGE TO ORDER TO MEDIATE

03/03/2004 ORDER TO CONTINUE TRIAL AND SETTLEMENT CONFERENCE SIGNED BY JUDGE MCNATT.

03/08/2004 SUBSTITUTION OF ATTORNFY[CRDF] IGOR PARFENOV; [DBA] DC TRANSPORT; IN PRO PER.

03/15/2004 CRDF CHANGED TO PRO PER

03/15/2004 CRDF CHANGED TO PRO PER

03/15/2004 DEFT'S SETTLEMENT CONFERENCE STATEMENT

03/12/2004 COUNTY OF SAN JOAQUIN'S MANDATORY SETTLEMENT CONFERENCE STATEMENT

03/12/2004 MANDATORY SETTLEMENT CONFERENCE STATEMENT[DEFT] CITY OF TRACY;

03/12/2004 REQUEST FOR ENTRY OF DISMISSAL FILED WITHOUT PREJUDICE BY [CRCO] AMERICOLD TRAN AS TO [CRDF] STATE OF CALIFORNIA ONLY.

03/12/2004 STATUS OF STATE OF CALIFORNIA CHANGED TO DISM

03/16/2004 SETTLEMENT CONFERENCE STATEMENT[CRCO] ADVANTAGE SYSTEMS INC; [CRCO] ADVANTAG TRANSPORTATION INC; [CRCO] ADVANTAGE MANAGEMENT INC;

03/17/2004 SETTLEMENT CONFERENCE STATEMENT[CRDF] I&R INC.

03/16/2004 ORDER DISCHARGING OSC SIGNED BY JUDGE MCNATT.

03/18/2004 SETTLEMENT CONFERENCE STATEMENT

03/18/2004 MANDATORY SETTLEMENT CONFERENCE STATEMENT OF[CRDF] FRANCISCO CRUZ; [CRDF] CO [CRDF] THE ESTATE OF JAIME CRUZ; SUED PURSUANT TO PROBATE CODE 550-555

03/17/2004 SETTLEMENT CONFERENCE STATEMENT**[DEFT] AMERICOLD TRANSPORTATION;

03/12/2004 FILED MOE AMENDMENT TO CROSS-COMPLAINT FOR COMPARATIVE EQUITABLE INDEMNITY, E CONTRIBUTION, DECLARATORY RELIEF, EXPRESS INDEMNITY & BREACH OF CONTRACT SOLE MOE 201, IDENTIFIED AS DC TRANSPORT AND MOE 202, IDENTIFIED AS IGOR PARFENOV[DEF

03/23/2004 MO: SETTLEMENT CONFERENCE HELD. NO SETTLEMENT - TRIAL TO REMAIN AS SET.

03/23/2004 NOTICE OF ENTRY OF ORDER.

04/08/2004 EX PARTE APPLICATION FOR ORDER SHORTENING TIME FOR HEARING OF CO OF SJ'S MOTION DETERMINATION OF GOOD FAITH SETTLEMENT.

04/08/2004 EX PARTE HEARING HELD RE: MOTION FOR GOOD FAITH SETTLEMENT. OST SIGNED. HRG SET 9AM. OPPOSITION DUE 4/13/04.

04/08/2004 ORDER SHORTENING TIME FOR HEARING OF CO OF SJ'S MOTION FOR DETERMINATION OF GO SETTLEMENT SIGNED BY JUDGE MCNATT.

04/08/2004 DEFT CO OF SJ'S NOTICE OF MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT (CCF

04/08/2004 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR DETERMINATION O SETTLEMENT.

04/08/2004 DECLARATION OF RALPH R. NEVIS IN SUPPORT OF MOTION FOR DETERMINATION OF GOOD FA SETTLEMENT.

04/09/2004 NOTICE OF ENTRY OF ORDER SHORTENING TIME FOR HEARING OF COUNTY OF SAN JOAQUIN'S DETERMINATION OF GOOD FAITH SETTLEMENT.

04/12/2004 PETITION TO APPROVE COMPROMISE OF CLAIM OF MINOR DIANA LAURA CRUZ FRAUSTO.

04/12/2004 PETITION TO APPROVE COMPROMISE OF CLAIM OF MINOR LIZETTE CRUZ FRAUSTO.

04/12/2004 PETITION TO APPROVE COMPROMISE OF CLAIM OF MINOR JAIME CRUZ FRAUSTO.

04/12/2004 PETITION TO APPROVE COMPROMISE OF CLAIM OF MINOR BRENDA CRUZ FRAUSTO.

03/23/2004 ORDER DENYING DEFT ADVANTAGE'S MOTION FOR SUMMARY JUDGMENT AND DEFT PARFENC THEREIN SIGNED BY JUDGE MCNATT.

04/14/2004 REPLY IN SUPPORT OF MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT.[DEFT] CO JOAQUIN;

04/14/2004 SUPPLEMENTAL DECLARATION OF RALPH R. NEVIS IN SUPPORT OF MOTION FOR DETERMINAT FAITH SETTLEMENT.[DEFT] COUNTY OF SAN JOAQUIN;

04/14/2004 DECLARATION OF VLADIMIR F. KOZINA IN RESPONSE TO FALSE ALLEGATIONS BY RALPH NEVIS TO OPPOSITION OF ADVANTAGE SYSTEMS TO SJ CO MOTION FOR GOOD FAITH.[CRDF] ADVANT INC;

04/14/2004 MOTION IN LIMINE TO EXCLUDE EVIDENCE OF LIABILITY INSURANCE, SANITIZE STATEMENTS[C ADVANTAGE SYSTEMS INC; [CRDF] ADVANTAGE TRANSPORT INC; [CRDF] ADVATAGE SYSTEMS [CRDF] ADVANATAGE MANAGEMENT CORP;

04/14/2004 MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMONY

04/14/2004 MOTION IN LIMINE RE: EXCLUDING INDUSTRY STANDARD[CRDF] ADVANTAGE SYSTEMS INC; [C ADVANTAGE TRANSPORT INC; [CRDF] ADVATAGE SYSTEMS INC OF IOWA; [CRDF] ADVANATAGE CORP;

04/14/2004 PROOF OF SERVICE FILED

04/14/2004 POINTS AND AUTHORITIES LIMITING MEDICAL RECOVERY[CRDF] ADVANTAGE SYSTEMS INC; [C ADVANTAGE TRANSPORT INC; [CRDF] ADVATAGE SYSTEMS INC OF IOWA; [CRDF] ADVANATAGE CORP;

04/15/2004 MO: HEARING FOR DEFT'S MOTION CONTINUED ON COURT'S MOTION NEW HEARING DATE: 04/2

04/20/2004 JURY TRIAL

04/19/2004 MO: CASE MANAGEMENT CONFERENCE HELD

04/20/2004 MO: OTHER PREDISPOSITION HEARING HELD. GOOD FAITH SETTLEMENT GRANTED. ORDER FIL FOR MINOR'S COMPS GRANTED. EACH MINOR TO RECEIVE \$11,250. EA/ -0- COSTS/AF @ 25%. N PENDING. MATTER CONT TO 4/21/04 @ 9:30AM D34.

04/20/2004 PREEMPTORY CHALLENGE OF TRIAL JUDGE PURSUANT TO CCP 170.6.[DEFT] VIKTOR KHASHCH VALERY TUTELYA; [DEFT] TVN TRANSPORTATION;

04/19/2004 MO: HEARING FOR CVLA CONTINUED NEW HEARING DATE: 04/20/2004

04/20/2004 ORDER GRANTING THE CO OF S J'S MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMEN JUDGE SAIERS.

04/21/2004 NOTICE OF ACCEPTANCE BY PLTF FERNANDO CRUZ OF[DEFT] CITY OF TRACY'S OFFER TO COI

04/21/2004 ORDER TO DEPOSIT MONEY INTO BLOCKED ACCOUNT. (BRENDA CRUZ FRAUSTO) SIGNED BY J

04/21/2004 ORDER APPROVING COMPROMISE OF CLAIM OF MINOR BRENDA CRUZ FRAUSTO SIGNED BY JU

04/21/2004 ORDER TO DEPOSIT MONEY INTO BLOCKED ACCOUNT (LIZETTE CRUZ FRAUSTO) SIGNED BY JL

04/21/2004 ORDER APPROVING COMPROMISE OF CLAIM OF MINOR LIZETTE CRUZ FRAUSTO SIGNED BY JL

04/21/2004 ORDER TO DEPOSIT MONEY INTO BLOCKED ACCOUNT (JAIME CRUZ FRAUSTO) SIGNED BY JUD

04/21/2004 ORDER APPROVING COMPROMISE OF CLAIM OF MINOR JAIME CRUZ FRAUSTO SIGNED BY JUD

04/21/2004 ORDER TO DEPOSIT MONEY INTO BLOCKED ACCOUNT (DIANE LAURA CRUZ FRAUSTO) SIGNED SAIERS.

04/21/2004 ORDER APPROVING COMPROMISE OF CLAIM OF MINOR DIANA LAURA CRUZ FRAUSTO SIGNED SAIERS.

04/22/2004 STATUS OF FRANCISCO CRUZ CHANGED TO DISM

04/22/2004 STATUS OF CONNIE CRUZ CHANGED TO DISM

04/22/2004 REQUEST FOR ENTRY OF DISMISSAL FILED WITHOUT PREJUDICE AS TO [CRDF] FRANCISCO CR CONNIE CRUZ ONLY.

04/22/2004 ACKNOWLEDGMENT OF PAYMENT[CRDF] FRANCISCO CRUZ; [CRDF] CONNIE CRUZ;

04/29/2004 ORDER GRANTING DEFT CITY OF TRACY'S MOTION TO BIFURCATE TRIAL SIGNED BY JUDGE MC

05/17/2004 NOTICE OF ENTRY OF ORDER**ORDER GRANTING[DEFT] CITY OF TRACY'S MOTION TO BIFURCA
ENTERED 04/29/04

06/29/2004 EX PARTE HEARING HELD RE: ORDER DETERMINING GOOD FAITH SETTLEMENT. OST APPROVE
GOOD FAITH SETTLEMENT SET FOR 7/7/04 @ 9AM.

06/29/2004 AMERICOLD'S N/M & MOTION FOR DETERMINATION OF GOOD FAITH SETTLEMENT.

06/29/2004 MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR DETERMINATION O
SETTLEMENT BY AMERICOLD TRANSPORTATION.

06/29/2004 REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF MOTION FOR DETERMINATION OF GOOD FAIT
BY AMERICOLD TRANSPORTATION.

06/29/2004 DECLARATION OF CHAD N. DUNIGAN IN SUPPORT OF MOTION FOR DETERMINATION OF GOOD I
SETTLEMENT BY AMERICOLD TRANSPORTATION.

07/07/2004 MO: OTHER PREDISPOSITION HEARING HELD. AMERICOLD'S MOTION FOR DETERMINATION OF
SETTLEMENT GRANTED. NO OPPOSITION.

05/25/2004 TRIAL ORDER RE: TRIAL PROCEDURES

07/07/2004 MINOR'S COMPROMISE IS APPROVED FOR \$35,000.00 AS TO DIANA LAURA CRUZ FRAUSTO.

07/07/2004 PETITIONER'S ATTORNEY IS GRANTED \$8,750.00 AS AND FOR ATTORNEY FEES.

07/07/2004 BALANCE OF \$26,250.00 IS TO BE DEPOSITED IN WELLS FARGO BANK @ 2170 TULLY RD., SAN JO
SUBJECT TO WITHDRAWAL ONLY UPON ORDER OF THE COURT.

07/07/2004 MINOR'S COMPROMISE IS APPROVED FOR \$35,000.00 AS TO JAIME CRUZ FRAUSTO.

07/07/2004 PETITIONER'S ATTORNEY IS GRANTED \$8,750.00 AS AND FOR ATTORNEY FEES.

07/07/2004 BALANCE OF \$26,250.00 IS TO BE DEPOSITED IN WELLS FARGO BANK @ 2170 TULLY RD., SAN JO
SUBJECT TO WITHDRAWAL ONLY UPON ORDER OF THE COURT.

07/07/2004 MINOR'S COMPROMISE IS APPROVED FOR \$35,000.00 AS TO BRENDA CRUZ FRAUSTO.

07/07/2004 PETITIONER'S ATTORNEY IS GRANTED \$8,750.00 AS AND FOR ATTORNEY FEES.

07/07/2004 BALANCE OF \$8,750.00 IS TO BE DEPOSITED IN WELLS FARGO BANK @ 2170 TULLY RD. SAN JO
SUBJECT TO WITHDRAWAL ONLY UPON ORDER OF THE COURT.

07/07/2004 MINOR'S COMPROMISE IS APPROVED FOR \$35,000.00 AS TO LIZETTE CRUZ FRAUSTO.

07/07/2004 PETITIONER'S ATTORNEY IS GRANTED \$8,750.00 AS AND FOR ATTORNEY FEES.

07/07/2004 BALANCE OF \$26,250.00 IS TO BE DEPOSITED IN WELLS FARGO BANK @ 2170 TULLY RD., SAN JO
SUBJECT TO WITHDRAWAL ONLY UPON ORDER OF THE COURT.

07/07/2004 ORDER APPROVING COMPROMISE OF CLAIM OF MINOR DIANA LAURA CRUZ FRAUSTO SIGNED
MCNATT.

07/07/2004 ORDER TO DEPOSIT MONEY INTO BLOCKED ACCOUNT SIGNED BY JUDGE MCNATT.

07/07/2004 ORDER APPROVING COMPROMISE OF CLAIM OF MINOR JAIME CRUZ FRAUSTO SIGNED BY JUDGE

07/07/2004 ORDER TO DEPOSIT MONEY INTO BLOCKED ACCOUNT SIGNED BY JUDGE MCNATT.

07/07/2004 ORDER APPROVING COMPROMISE OF CLAIM OF MINOR BRENDA CRUZ FRAUSTO SIGNED BY JU

07/07/2004 ORDER TO DEPOSIT MONEY INTO BLOCKED ACCOUNT SIGNED BY JUDGE MCNATT.

07/07/2004 ORDER APPROVING COMPROMISE OF CLAIM OF MINOR LIZETTE CRUZ FRAUSTO SIGNED BY JU

07/07/2004 ORDER TO DEPOSIT MONEY INTO BLOCKED ACCOUNT SIGNED BY JUDGE MCNATT.

06/07/2004 STATUS OF COUNTY OF SAN JOAQUIN CHANGED TO DISM

06/07/2004 REQUEST FOR ENTRY OF DISMISSAL AS TO DEFT COUNTY OF SAN JOAQUIN ONLY!

07/21/2004 ORDER ON MOTION FOR GOOD FAITH SETTLEMENT DETERMINATION & DISMISSAL OF CROSS-C
SIGNED BY JUDGE MCNATT.

07/21/2004 STATUS OF AMERICOLD TRANSPORTATION CHANGED TO DISM

07/21/2004 STATUS OF AMERICOLD TRANSPORTATION CHANGED TO DISM

07/21/2004 STATUS OF AMERICOLD TRANSPORTATION CHANGED TO DISM

07/21/2004 STATUS OF AMERICOLD TRANSPORTATION CHANGED TO DISM

09/01/2004 DOE AMENDMENT TO COMPLAINT FOR DAMAGES AND WRONGFUL DEATH

09/07/2004 NOTICE OF REGARDING PREVIOUSLY SERVED MOTIONS IN LIMINE

09/07/2004 PROOF OF SERVICE FILED

09/07/2004 [DEFT] ADVANTAGE SYSTEMS INC.; [DEFT] ADVANTAGE SYSTEMS OF IOWA INC.; [DEFT] ADVANTAGE MANAGEMENT CORPORATION INC.; [DEFT] ADVANTAGE TRANSPORTATION INC.'S POINTS AND JOINDER IN CITY OF TRACY'S MOTION IN LIMINE NO. 1 RE: EXCLUDE EVIDENCE

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION NO.6. TO EXCLUDE EVIDENCE OF NEWS REPORTS AND VIDEO CLIP.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION NO. 3 TO EXCLUDE EVIDENCE OF EARING CAPACITY.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION NO.5. TO EXCLUDE EMOTIONAL DISTRESS DAMAGES.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION NO.7. RE: CITIZEN LETTERS.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION NO.8 RE; PRIOR ACCIDENT OF JANUARY 1994.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION NO 9 TO EXCLUDE POST DEATH CIRCUMSTANCES.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION NO.10 RE CONDITION OF JAIME CRUZ'S BODY AFTER COLLISION.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION NO.10 RE; EARING CAPACITY OF HEIRS OF JAIME CRUZ.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY OPPOSITION TO CITY OF TRACY'S MOTION RE EARNING CAPACITY CLAIM OF HEIRS OF JAIME CRUZ.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY, IN PARTIAL SUPPORT OF CITY OF TRACY'S MOTION IN LIMINE TO EXCLUDE CUMMULATIVE EXPERTS OF PLAINTIFF.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY, JOINDER IN CITY OF TRACY'S MOTION 12. TESTIMONEY OF FERNANDO CRUZ CONCERNING HEADLIGHTS AND SPEED OF VE

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY, JOINDER IN CITY OF TRACY'S MOTION 13. RE NON-EXPERT TESTIMONY OF DANGEROUS CONDITION.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY, JOINDER IN CITY OF TRACY'S MOTION 15. TO EXCLUDE FEELINGS REGARDING ACCIDENT AND DEATH.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY, JOINDER IN CITY OF TRACY'S MOTION 16. EXCLUDE EVIDENCE OF DRIVER LICENSE AND IMMIGRATION DOCUMENTS.

DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPORTATION INC. POINTS AND AUTHORITY, JOINDER IN CITY OF TRACY'S MOTION 16. EXCLUDE EVIDENCE OF DRIVER LICENSE AND IMMIGRATION DOCUMENTS.

09/07/2004 ADVANTAGE MANAGMEN, INC POINTS AND AUTHORITIE, JOINDER IN CITY OF TRACY'S MOTION 17. LIMITING MEDICAL SPECIALS.

09/07/2004 DEFT (ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPOR ADVANTAGE MANAGMEN, INC POINTS AND AUTHORITIE, JOINDER IN CITY OF TRACY'S MOTION 18. RE PRELIMINARY HEARING PARENTS PECUNIARY LOSS.

09/07/2004 DEFT ADVANTAGE SYSTEM INC'S MOTION IM LIMINE TO ESTABLISH ADVANTAGE'S LEGAL STAT

09/07/2004 DEFT ADVANTAGE'S MOTION IN LIMINE NUMBER 2 TO EXCLUDE ANY EXPERT OPINIONS ON LAV GOVERNMENTAL GEGULATION.

09/07/2004 DEFT (ADVANTAGE SYSTEMS INC.'S) MOTION IN LIMINE NUMBER THREE TO PRECLUDE FRANCI FERNANDO CRUZ FROM PRESENTING EVIDENCE OR SEEKING DAMAGES FOR EMOTIONAL DIST BYSTANDER THEORY.

09/07/2004 DEFT ADVANTAGE SYSTEM INC.'S MOTION IN LIMINE NUMBER FOUR TO EXCLUDE TESTIMONY I EVIDENCE PREPARED BY PLAINTIFF'S EXPERT PAUL KAYFETZ. ORDER.

09/07/2004 ADVANTAGE SYSTEMS, INC.'S OPPOSITION TO PLAINTIFF'S SECOND MOTION IN LIMINE TO EXCI INVESTIGATING POLICE OFFICERS' OPINIONS OR CONCLUSIONS ATTRIBUTING FAULT TO JAIME

09/07/2004 DEFT ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEMS OF IOWA, INC. ADVANTAGE TRANSPOR ADVANTAGE MANAGMENT," POINTS AND AUTHORITIES IN OPPOSITION TO PLAINTIFFS MOTION EXCLUSIONS ATTRIBUTING FAULT TO JAIME CRUZ.

09/07/2004 ADVANTAGE SYSTEMS, INC.'S OPPOSITION TO PLAINTIFF'S THIRD MOTION IN LIMINE TO EXCLU RELATING TO JAIME CRUZ EXPIRED DRIVER'S LICENSE.

09/07/2004 DEFT ADVANTAGE SYSTEM INC.'S OPPOSITION TO PLAINTIFFS MOTION IN LIMINE NUMBER THR EXCLUDE EVIDENCE RELATING TO JAIME CRUZ'S EXPIRED DRIVER'S LICENSE.

09/07/2004 ADVANTAGE SYSTEMS, INC.'S OPPOSITION TO PLAINTIFF'S FOURTH MOTION IN LIMINE TO EXCI REGARDING ANY STATUS FOR DEFT ADVANTAGE SYSTEMS, INC. OTHER THAN AS MOTOR CAR

09/07/2004 DEFT ADVANTAGE SYSTEM INC.'S OPPOSITION TO PLAINTIFFS MOTION IN LIMINE NUMBER EIGH TESTIMONY CONCERNING VISIBILITY STUDY.

09/07/2004 NOTICE REGARDING PREVIOUSLY SERVED MOTION IN LIMINE.

09/07/2004 PROOF OF SERVICE FILED SEE PROOF OF SERVICE LIST.

09/07/2004 PLTFS' MOTION IN LIMINE #1 TO EXCLUDE INVESTIGATING POLICE OFFICERS' OPINION OR CON ATTRIBUTING FAULT TO JAIME CRUZ

09/07/2004 PLTFS' MOTION IN LIMINE #2 TO EXCLUDE EVIDENCE RELATING TO JAIME CRUZ' EXPIRED DRIV

09/07/2004 PLTFS' MOTION IN LIMINE #3 TO EXCLUDE EVIDENCE REGARDING ANY STATUS FOR DEFT ADVA SYSTEMS, INC., OTHER THAN AS A MOTOR CARRIER

09/07/2004 PLTFS' MOTION IN LIMINE #4 TO EXCLUDE THE TESTIMONY OF EXPERT MICHAEL MAYDA AND T STUDY NOT PRODUCED DURING DISCOVERY

09/07/2004 PLTFS' MOTION IN LIMINE #5 TO EXCLUDE THE PORTION OF DEFTS' VISIBILITY STUDY THAT IS E EXPERIMENTAL RECONSTRUCTION OF THE EASTBOUND APPROACH TO THE INTERSECTION

09/07/2004 PLTFS' MOTION IN LIMINE #6 TO EXCLUDE EVIDENCE RELATING TO PLTFS' NATIONAL ORIGIN OI STATUS

09/07/2004 PROOF OF SERVICE FILED

08/16/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED WITH PREJUDICE COMPLAINT AS TO[DE AMERICOLD TRANSPORTATION ONLY

09/07/2004 DEFT (VALERITY TUTEL YA, DBA TVN TRANSPORT, AND VIKTOR KHASCHUK) DEFT'S MOTION IN

09/09/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED WITH PREJUDICE CROSS-COMPLAINT F COUNTY OF SAN JOAQUIN AS TO THE ESTATE OF JAIME CRUZ, DECEASED, FRANCISCO CRUZ, ONLY

09/09/2004 STATUS OF ESTATE OF JAIME CRUZ CHANGED TO DISM

09/09/2004 STATUS OF FRANCISCO CRUZ CHANGED TO DISM

09/09/2004 STATUS OF CONNIE CRUZ CHANGED TO DISM

09/10/2004 PLTFS' OPPOSITION TO ADVANTAGE DEFTS' MOTION IN LIMINE TO EXCLUDE EVIDENCE OF LIAE INSURANCE

09/10/2004 PLTFS' OPPOSITION TO ADVANTAGE DEFTS' MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATI TRUCKING INDUSTRY STANDARDS

09/10/2004 PLTFS' OPPOSITION TO ADVANTAGE DEFTS' MOTION IN LIMINE TO LIMIT MEDICAL RECOVERY

09/10/2004 PLTFS' OPPOSITION TO JOINDER OF DEFT ADVANTAGE SYSTEMS, INC. ADVANTAGE SYSTEMS (ADVANTAGE TRANSPORTATION, INC. AND ADVANTAGE MANAGEMENT, INC. TO DEFT CITY OF T IN LIMINE #12 TO EXCLUDE TESTIMONY

09/10/2004 PLTFS' OPPOSITION TO ADVANTAGE DEFTS' JOINDER IN CITY OF TRACY'S MOTION IN LIMINE #1 EVIDENCE OF DRIVER'S LICENSE AND IMMIGRATION DOCUMENTS

09/10/2004 PLTFS' OPPOSITION TO ADVANTAGE DEFTS' JOINDER IN CITY OF TRACY'S MOTION IN LIMINE #3 EARNING CAPACITY CLAIM OF HEIRS OF JAIME CRUZ

09/10/2004 PLTFS' OPPOSITION TO DEFT CITY OF TRACY'S MOTION IN LIMINE #2 REQUESTING TWO JURIES BIFURCATED ACTION

09/10/2004 PLTFS' OPPOSITION TO ADVANTAGE DEFTS' MOTION IN LIMINE TO EXCLUDE EXPERT TESTIMOI HYLAND

09/10/2004 PLTFS' OPPOSITION TO ADVANTAGE DEFTS' JOINDER IN CITY OF TRACY'S MOTION IN LIMINE #1 EXPERT WITNESS TESTIMONY

09/10/2004 PLTFS' OPPOSITION TO DEFT ADVANTAGE'S MOTION IN LIMINE #4 TO EXCLUDE TESTIMONY ANI VISIBILITY STUDY PREPARED BY EXPERT PAUL KAYFETZ

09/10/2004 PLTFS' OPPOSITION TO ADVANTAGE DEFTS' MOTION IN LIMINE TO EXCLUDE PLTFS' EXPERT WI

09/10/2004 PROOF OF SERVICE FILED

09/13/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED WITH PREJUDICE CROSS-COMPLAINT F ADVANTAGE SYSTEMS, INC. AGAINST CITY OF TRACY ONLY

09/10/2004 DEFT AND CROSS-COMPLAIANT (CITY OF TRACY) NOTICE OF SETTLEMENT AND APPLICATION F DETERMINATION OF GOOD FAITH SETTLEMENT BY DEFT CITY OF TRACY; MEMORANDUM OF PC AUTHORIES AND DEL. OF MARK F HAZLEWOOD AND ORDER DETERMINING GOOD FAITH SETTLI

09/15/2004 NOTICE OF ENTRY OF DISMISSAL & POS

09/17/2004 EX PARTE APPLICATION FOR AN ORDER SHORTENING TIME ON MOTION TO CONTINUE TRIAL D DEC OF THOMAS D. NIELSEN IN SUPPORT THEREOF; (PROPOSED ORDER)

09/17/2004 MOTION TO CONTINUE

09/17/2004 ORDER RE: EX PARTE APPLICATION FOR ORDER SHORTENING TIME SIGNED BY JUDGE HOLLY

09/17/2004 EX PARTE HEARING HELD RE: CONTINUE TRIAL : NEW HEARING 9-20-04

09/21/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED W/OUT PREJUDICE FIRST AMENDED CF COMPLAINT FILED BY CITY OF TRACY AS TO CRDFS THE ESTATE OF JAIME CRUZ, FRANCISCO (CRUZ ONLY

09/20/2004 MO: OTHER PREDISPOSITION HEARING HELD

09/17/2004 DEFT (I&R, INC.) NOTICE OF ENTRU OF ORDER REGARDING SEVERANCE OF I&R, INC.

09/22/2004 NOTICE OF MOTION TO STAY

09/22/2004 NOTICE OF MOTION A 402 HEARING

09/22/2004 RECEIPT AND ACKNOWLEDGMENT OF ORDER FOR THE DEPOSIT OF MONEY INTO BLOCKED AC (JAIME CRUZ FRAUSTO).

09/22/2004 RECEIPT AND ACKNOWLEDGMENT OF ORDER FOR THE DEPOSIT OF MONEY INTO BLOCKED AC (BRENDA CRUZ FRAUSTO).

09/22/2004 RECEIPT AND ACKNOWLEDGMENT OF ORDER FOR THE DEPOSIT OF MONEY INTO BLOCKED AC (LIZETTE CRUZ FRAUSTO).

09/22/2004 RECEIPT AND ACKNOWLEDGMENT OF ORDER FOR THE DEPOSIT OF MONEY INTO BLOCKED AC (DIANA LAURA CRUZ FRAUSTO).

09/17/2004 SUBSTITUTION OF ATTORNEY FILED BY IGOR PARFENOV AND DBA DC TRANSPORT
 09/27/2004 PLTFS' MOTION IN LIMINE #7 TO EXCLUDE EVIDENCE OF COLLATERAL SOURCE PAYMENTS
 09/27/2004 PLTFS' MOTION IN LIMINE #8 TO EXCLUDE EVIDENCE OF PRIOR SETTLEMENTS WITH CO-DEFTS
 09/27/2004 PLTFS' MOTION IN LIMINE #9 TO EXCLUDE EVIDENCE OF SUBSEQUENT REMEDIAL MEASURES
 09/27/2004 PROOF OF SERVICE FILED FOR PLTFS MOTION IN LIMINE #7; PLTFS' MOTION IN LIMINE #8; PLTF
 LIMINE #9 BY MAIL ON 9-22-04 TO ATTACHED LISTING
 09/28/2004 OBJECTION TO PLTFS MOTION IN LIMINE #7 TO EXCLUDE EVIDENCE OF COLLATERAL SOURCE
 09/28/2004 OBJECTION TO PLTFS MOTION IN LIMINE #8 TO EXCLUDE EVIDENCE OF PRIOR SETTLEMENTS V
 09/28/2004 OBJECTION TO PLTFS MOTION IN LIMINE #9 TO EXCLUDE EVIDENCE OF SUBSEQUENT REMEDIA
 09/24/2004 NOTICE OF ENTRY OF DISMISSAL & POS
 09/14/2004 PRE-TRIAL MOTIONS HEARD
 09/15/2004 PRE-TRIAL MOTIONS HEARD
 09/28/2004 STIPULATED CONTINUANCE NEW HEARING DATE: 10/06/2004
 09/28/2004 STIPULATION TO CONTINUE 402 HEARING SIGNED BY JUDGE HOLLY
 09/30/2004 MO: OTHER PREDISPOSITION HEARING HELD
 10/04/2004 PLTFS' OPPOSITION TO DEFTS KHASHCHUK AND TUTELYA'S MOTION IN LIMINE #3 TO EXCLUDE
 THE TRACY POLICE RECONSTRUCTION
 10/04/2004 DEFTS SUPPLEMENTAL BRIEF IN SUPPORT OF DEFTS KHASHCHUK AND TUTELYA'S MOTION IN
 10/06/2004 MO: OTHER PREDISPOSITION HEARING HELD
 10/13/2004 JURY TRIAL
 10/13/2004 JURY TRIAL
 10/13/2004 JURY TRIAL
 10/14/2004 TRIAL HELD AFTER SETTLEMENT CONFERENCE
 10/15/2004 TRIAL HELD AFTER SETTLEMENT CONFERENCE
 10/19/2004 JURY TRIAL
 10/19/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 10/20/2004
 10/19/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 10/21/2004
 10/19/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 10/22/2004
 10/19/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED W/OUT PREJUDICE COMPLAINT AS TO I
 ADVANTAGE TRANSPORTATION, INC. ONLY
 10/19/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED W/OUT PREJUDICE COMPLAINT AS TO I
 ADVANTAGE MANAGEMENT CORPORATION, INC. ONLY
 10/19/2004 STATUS OF ADVANTAGE MANAGEMENT CORPORATION INC. CHANGED TO DISM
 10/19/2004 STATUS OF ADVANTAGE TRANSPORTATION INC. CHANGED TO DISM
 10/19/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED W/OUT PREJUDICE COMPLAINT AS TO F
 FERNANDO CRUZ ONLY
 10/22/2004 TRIAL HELD AFTER SETTLEMENT CONFERENCE
 10/25/2004 MINUTE ORDER OF HEARING CALENDARER FOR OCTOBER 12, 2004
 10/25/2004 SETTLEMENT CONFERENCE CONTINUED TO 10/26/04 @ 1:30PM #11.
 10/25/2004 SETTLEMENT CONFERENCE
 10/26/2004 JURY TRIAL
 10/26/2004 JURY TRIAL

10/26/2004 JURY TRIAL
 10/26/2004 JURY TRIAL
 10/25/2004 MO: SETTLEMENT CONFERENCE HELD
 10/26/2004 TRIAL HELD AFTER SETTLEMENT CONFERENCE
 10/27/2004 TRIAL HELD AFTER SETTLEMENT CONFERENCE
 10/27/2004 NOTICE OF ENTRY OF ORDER RE ORDER DETERMINING GOOD FAITH SETTLEMENT BETWEEN F
 DEFT CITY OF TRACY
 10/28/2004 TRIAL HELD AFTER SETTLEMENT CONFERENCE
 10/29/2004 TRIAL HELD AFTER SETTLEMENT CONFERENCE
 11/03/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 11/03/2004
 11/03/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 11/04/2004
 11/03/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 11/05/2004
 11/03/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED W/OUT PREJUDICE CROSS-COMPLAINT
 AMERICOLD TRANSPORTATION ONLY
 11/04/2004 STATUS OF AMERICOLD TRANSPORTATION CHANGED TO DISM
 11/03/2004 NOTICE OF ENTRY OF DISMISSAL & POS (CMPLT AS TO FERNANDO CRUZ ONLY)
 11/05/2004 TRIAL HELD AFTER SETTLEMENT CONFERENCE
 11/09/2004 MO: HEARING CONTINUED NEW HEARING DATE: 11/09/2004
 11/09/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 11/10/2004
 11/09/2004 MO: HEARING CONTINUED ON COURT'S MOTION NEW HEARING DATE: 11/12/2004
 11/09/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED W/OUT PREJUDICE AS TO CROSS-COMI
 BY AMERICOLD TRANSPORTATION ONLY
 11/09/2004 STATUS OF AMERICOLD TRANSPORTATION CHANGED TO DISM
 10/26/2004 MO: SETTLEMENT CONFERENCE HELD. NO SETTLEMENT. TRIAL TO REMAIN AS SET.
 11/23/2004 TRIAL SETTING CONFERENCE
 11/24/2004 NOTICE OF MOTION & MOTION FOR AWARD OF COSTS & ATTORNEY FEES UNDER C.C.P. 128,17
 11/24/2004 NOTICE OF MOTION FOR AWARD OF COSTS & ATTORNEY FEES
 12/03/2004 DECLARATION OF GREGORY J. ROCKWELL IN SUPPORT OF JOINDER IN MOTION FOR AWARD
 ATTORNEY FEES.
 12/03/2004 DECLARATION OF SERVICE OF JOINDER IN MOTION FOR AWARD OF JOINDER IN MOTION FOR A
 COSTS AND ATTORNEY FEES.
 12/06/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED WITH PREJUDICE AS TO DEFT CITY OF
 12/06/2004 STATUS OF CITY OF TRACY CHANGED TO DISM
 12/09/2004 SETTLEMENT CONFERENCE STATEMENT[DEFT] ADVANTAGE SYSTEMS INC.; [DEFT] ADVANTAG
 IOWA INC.; [DEFT] ADVANTAGE MANAGEMENT CORPORATION INC.; [DEFT] ADVANTAGE TRANSF
 INC.;
 12/14/2004 JOINDER BY DEFT IGORT PARFENOV, NAMED INDIVIDUALLY & DBA DC TRANSPORT (ALSO NAMI
 TRNAPORT) IN MOTION FOR AWARD OF COSTS & ATTORNEY FEES UNDER C.C.P. 128, 177 & 187
 MOTION
 12/14/2004 DECLARATION OF ROBERT M. SHANNON IN SUPPORT OF JOINDER IN MOTIION FOR AWARD OF
 ATTORNEY FEES
 12/03/2004 SETTLEMENT CONFERENCE
 12/15/2004 NOTICE OF HEARING
 12/03/2004 JURY TRIAL ASSIGNMENT

12/15/2004 NOTICE OF HEARING
12/16/2004 NOTICE OF TIME AND PLACE OF SETTLEMENT CONFERENCE
12/28/2004 REQUEST FOR ENTRY OF DISMISSAL FILED & ENTERED W/OUT PREJUDICE AS TO[DEFT] STATE CALIFORNIA, ONLY
12/27/2004 SETTLEMENT CONFERENCE HELD. TRIAL RAS.
12/28/2004 OPPOSITION TO MOTION FOR AWARD OF COSTS AND ATTORNEY FEES UNDER CCP 128, 177 & 187
12/30/2004 DECLARATION OF R LEWIS VAN BLOIS IN SUPPORT OF OPPOSITION TO MOTION FOR AWARD OF ATTORNEY FEES UNDER CCP 128, 177 & 187
12/30/2004 NOTICE OF TIME AND PLACE OF SETTLEMENT CONFERENCE
01/07/2005 MO: OTHER PREDISPOSITION HEARING HELD
01/07/2005 MO: MOTIONS FOR AWARD OF COSTS & ATTORNEY FEES GRANTED
01/11/2005 DEFT ADVANATAGE SYSTEM, INC. ADVANATAGE SYSTEM OF IOWA, INC. ADVANTAGE TRANSPC
NOTICE OF COURT'S RULING.

Please contact the [webmaster](#) with your suggestions or comments.
[\[Privacy Policy\]](#)

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
2 Sabbah and MacKoul
3 Attorneys and Counselors at Law
4 49 Locust Street
5 Falmouth, Massachusetts 02540
6
7 508-495-4955

8 Anthony Boskovich, No. 121198
9 Law Offices of Anthony Boskovich
10 28 N. First Street, 6th Floor
11 San Jose, California 95113-1210
12
13 408-286-5150
14 Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN

14 KATHLEEN MACHADO, individually and
15 in her capacity as Guardian ad Litem for
16 RACHEL LOMAS and AMBER LOMAS,
Plaintiffs,

16 v.

17 FATHER JOSEPH ILLO; FATHER FRANCIS
18 JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
19 FATHER RICHARD RYAN; BISHOP STEVEN
20 BLAIRE; THE DIOCESE OF STOCKTON;
21 DOES 1 through 100,
Defendants.

No. CV 018440

PROOF OF SERVICE

21 I am employed in the County of Santa Clara, State of California.

22 I am over the age of 18 and not a party to the within action; my business address is 28 North
23 First Street, Sixth Floor, San Jose, CA 95113-1210.

24 On January 19, 2005, I caused to be served the foregoing :

- 25 **1. DECLARATION OF GEORGE J. MACKOUL IN OPPOSITION TO**
26 **MOTION FOR CONTINUANCE;**
27
28

FILED
05 JAN 20 PM 2:09
ROSA M. GONZALEZ, CLERK
BY _____ DEPUTY

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 2. **DECLARATION OF ANTHONY BOSKOVICH IN OPPOSITION TO**
2 **MOTION FOR CONTINUANCE; and**

3 3. **PLAINTIFFS' OPPOSITION TO MOTION FOR CONTINUANCE**

4 on the parties involved in said cause by placing a true and correct copy of the document listed above
5 enclosed in a sealed envelope(s) with postage thereon fully prepaid in the United States Mail at San
6 Jose, California, addressed to the person(s) on whom it is to be served as follows:

7 Paul Balestracci, Esq.
8 Neumiller & Beardslee
9 P.O. Box 20
10 Stockton, CA 95201-3020

11 George J. MacKoul, Esq.
12 Sabbah and MacKoul
13 Attorneys and Counselors at Law
14 49 Locust Street
15 Falmouth, Massachusetts 02540

16 Jack Williams, Esq.
17 **WILLIAMS & WILLIAMS MEDIATION**
18 110 N. Third Street
19 San Jose, CA 95112

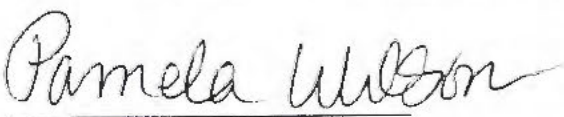
20 and by placing a true and correct copy of the document(s) listed above enclosed in a sealed
21 envelope(s) and causing said envelope(s) to be delivered to an overnight delivery carrier with delivery
22 fees provided for, addressed to the following person(s) on whom it is to be served

23 Michael Coughlan, Esq.
24 Coughlan & O'Rourke, LLP
25 3031 W. March Lane, Suite 210 West
26 Stockton, CA 95219

27 Vladimir F. Kozina, Esq.
28 Mayall, Hurley, Knutsen, Smith & Green
29 2453 Grand Canal Blvd., 2nd Floor
30 Stockton, CA 95207-8253

Executed on 19 January 2005, at San Jose, California.

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


PAMELA WILSON

1 George J. MacKoul (Bar No. 170586)
2 SABBABH 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 - 200501188005

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
**PLAINTIFFS' NOTICE OF MOTION AND
MOTION FOR PROTECTIVE ORDER
TO PROHIBIT THE TAKING OF THE
DEPOSITION OF PLAINTIFFS'
COUNSELS' INVESTIGATOR, JOHNNY
SMITH REQUEST FOR MONETARY
SANCTIONS AGAINST VLADIMIR F.
KOSINA AND THE DIOCESE OF
STOCKTON PURSUANT TO C.C.P.
SECTIONS 2025 (i) AND SECTION 2023
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION, DECLARATION OF
ANTHONY BOSKOVICH ESQ. AND
GEORGE J. MACKOUL IN SUPPORT
OF MOTION TO COMPEL AND
SANCTIONS.**

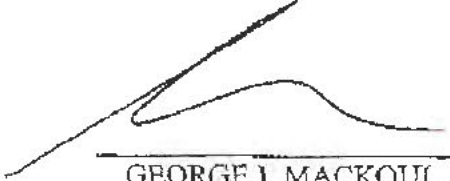
DATE: February 8, 2005 ✓
DEPT: 41
TIME: 9:00 A.M.

TRIAL DATE: February 22, 2005

FILED
05 MAR 10 PM 2:29
ROSALIND J. JORDEN, CLERK
BY Jamela Serrano
DEPUTY

1 YOU ARE HEREBY NOTIFIED THAT at 9 a.m. on February 8, 2005 or as soon
2 thereafter as the matter can be heard, in Department 41 of this Court, Plaintiff will move this
3 Court for an order to prevent the deposition of Plaintiffs' investigator from being taken and also
4 for an order that Defense Counsel for the Diocese of Stockton and Vladimir F. Kosina and the
5 Diocese of Stockton pay monetary sanction to moving party in the sum of \$1,786.31 for the
6 reasonable expenses and attorney's fees incurred by the moving party in connection with this
7 proceeding. This motion will be made on the grounds that Investigator Smith's investigation of
8 this case on behalf of plaintiffs' counsel, constitutes qualified work product is therefore not
9 discoverable. Said motion will be based on this notice, the points and authorities set forth below,
10 the attached declaration of Anthony Boskovich Esq. and George J. MacKoul Esq. and the
11 complete files and records in this action.

12
13 Dated: 1/14/05


14 GEORGE J. MACKOUL
15 SABBAAH & MACKOUL
16 Attorneys for the Plaintiffs
17
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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 a 13-year-old plaintiff,
5 Rachel Lomas and 11-year-old plaintiff, Amber Lomas by defendant Fr. Joseph Arakal. The
6 lawsuit also alleges damages for intentional infliction of emotional distress against the defendant
7 Fr. Joseph Illo, for allegedly terrorizing plaintiff Amber Lomas for reporting the sexual abuse by
8 Fr. Arakal. During the terrorization of Amber Lomas, defendant Illo defamed plaintiff, Kathleen
9 Machado, the mother of Amber.

10 The balances of the allegations stated in the complaint, are for conspiracy in an apparent
11 cover up of the alleged sexual abuse¹ resulting in an intentional obstruction of the subsequent
12 criminal investigation by Fr. Richard Ryan, Fr. Illo and Fr. Arakal. Respondent Superior
13 Liability has been pleading against the defendant Diocese and Bishop Steven Blaire for the
14 defamatory behavior/cover up of the abuse allegations by their priests.

15 Plaintiffs intend on amending their complaint to add punitive damages against some or all
16 of the defendants prior to trial.
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25 ¹ Yvonne McGlaughlin, a licensed therapist called in by the defendants to treat Amber Lomas took the 5th
Amendment during her deposition.

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II.

RECENT PROCEDURAL HISTORY

Other than motions to compel, which were filed on written discovery response early on in the case, discovery of this case is close to concluding and to date has been pleasant and cooperative experience between counsels. No one would expect anything less on a sensitive case such as this involving children.

But soon this all changed. During the mediation of this matter on November 29, 2004, when the case did not resolve, defendants Diocese of Stockton, Bishop Blaire, Fr. Illo and Fr. Ryan, associated in new defense counsel, Vladimir F. Kosina and thereby changed the strategic defense of this matter.

Counsel Kosina has approached the case with a blowtorch and hammer. He has written defamatory letters to opposing counsel, treated the victims with disdain, been uncooperative in discovery matters and has withheld common courtesies to both plaintiff and defense counsels.

Attorney Kosina's "bullying" style of litigation further manifested itself when he subpoenaed the plaintiffs' investigator, Johnny Smith, in a calculated attempt to force plaintiffs to spend more time and money than necessary by forcing them to file this motion. See Attached Exhibit A.

Apparently plaintiffs' counsel had inadvertently identified Smith for the plaintiff in their interrogatory responses. Plaintiffs met and conferred with Mr. Kosina, and by letter advised him that they would withdraw Smith from their witness list. The letter further stated the relevant law, which is used to support this motion that the work done by Smith as an agent of plaintiffs' counsels protected by the qualified work product doctrine. Please see Exhibit B, letter dated January 9, 2005 by counsel for plaintiffs' Boskovich.

1 Mr. Kosina responded to Mr. Boskovich's letter on January 10, 2005, by ignoring the law
2 cited in Mr. Boskovich's letter and further attempted to extort concession from plaintiff by
3 stating that he would proceed with the deposition of Smith, unless plaintiff agreed to never call
4 their investigator at the time of trial.² See Exhibit C attached.

5 Further Attorney Kosina, never expressed/argued or explained during his meet and confer
6 process with Attorney Boskovich that by **not** deposing Smith it would "unfairly prejudice his
7 clients defenses or will result in an injustice" a.k.a, "good cause" the *legal standard* for
8 overriding the qualified work product doctrine which controls the resolution of this dispute. See
9 *Ca Civ Pro* § 2018(b) and *Greyhound Corp v. Superior Court (Clay)* 1961 56 Cal 2nd 355.

10 Accordingly, Attorney Kosina achieved what he was looking for, the setting of a
11 frivolous deposition, with the specific intent of forcing plaintiffs to file this motion.

12 In order to prevent the further victimization of children abused by the clergy and the
13 church they trusted, by and through the litigation process, sanctions are not only appropriate, but
14 also necessary.

15
16 **II.**

17 **IT IS A PREFUNCTORY RULE IN THIS STATE THAT THE WORK DONE BY AN**
18 **INVESTIGATOR AS AN "AGENT" OF A TRIAL ATTORNEY IS CONSIDERED TO**
19 **BE THE TRIAL ATTORNEY'S "WORK PRODUCT".**

20
21
22 The "work product" of an attorney's employees or agents (investigators, researchers, etc.)
23 is treated as the "work product" of the attorney. See *Rodriguez v. McDonnell Douglas Corp.*
24 (1978) 87 Cal.App.3d 626, 647-648, 151 Cal.Rptr. 399, 410.

25

² Plaintiffs have spent thousands of dollars in investigation fees that have yielded witnesses who will support the

1 One can only imagine if the rule were to the contrary. Opposing counsel could simply
2 wait until their opponent used an investigator or consultant to “investigate the facts of the case”,
3 and then swoop in and pick the brain of opponents’ investigator, without spending time or a
4 dime.

5 Hence the logic and fairness behind this time honored rule.

6 Defense counsel Kosina has never mentioned nor argue why good cause exists to
7 override this time-honored rule.

8
9 **III.**

10 **DEFENDANT HAS "MISUSES THE DISCOVERY PROCESS" [CA CIV PRO §**
11 **2023(A)(1)&(3)]; AND SANCTIONS ARE APPROPRIATE FOR THE COST OF**
12 **BRINGING THIS MOTION.**

13 *C.C.P.* 2025 (i) mandates that the court order sanction to be imposed against a party who
14 unsuccessfully opposes a protective order referring to *C.C.P.* 2023.

15 *Ca Civ Pro* § 2023(a)(1) &(3) hits the “nail on the head” in this case. Defendants
16 subpoenaed plaintiffs’ investigator and has

- 17 1. “Persisted over objection to and without substantial justification in an attempt to
18 obtain information outside the scope of permissible discovery” [2023 (a) (1)] (see
19 Exhibits B and C.)
- 20 2. “Employed a discovery method in a manner or to an extent that causes unwarranted
21 annoyance, oppression and undue expense [2023 (a) (3)]

22
23 Sanctions are therefore justified in accordance with Mr. MacKoul’s and Mr. Boskovich’s
24 attached declarations.

25
theories stated in their complaint, and plan to call Smith as a rebuttal witnesses, if at all, at the time of trial.

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VI.
CONCLUSION

Based on the foregoing, as well as the arguments set forth in the moving parties the moving party respectfully requests that the court order the defendant Diocese of Stockton and their counsel to cease and desist in the taking of Johnny Smiths deposition in this matter and further to award the moving party sanctions in accordance with the attached declaration of Attorney Boskovich.

Dated: 1/14/05



GEORGE J. MACKOUL
SABBAH & 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 along with my co-counsel Anthony Boskovich, 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. Johnny Smith of Johnny Smith investigations has been the investigator for plaintiffs counsel for over two and one half years. Smith has interviewed witnesses for plaintiff and had numerous discussions regarding strategies and tactics with me. Smith has been instrumental in helping plaintiffs' counsels decide which witnesses to call at the time of trial and what evidence to discover.
3. Attached, as Exhibit A is a true and correct copy of a deposition subpoena served on plaintiffs' investigator Johnny Smith on or about January 6, 2005.
4. Attached, as Exhibit B is a true and correct copy of a meet and confer letter dated January 9, 2005, sent from by Attorney Boskovich, explaining the relevant law and plaintiffs' position with respect to the prohibition in taking Smiths deposition.
5. Attached, as Exhibit C is a true and correct copy of a letter dated January 10, 2005 from Attorney Kosina responding to Attorney Boskovich, January 9, 2005. No explanation or arguments were made in this letter or at any other time as to why "good cause" existed to take Smiths deposition. The letter speaks for itself and seeks to extract concessions rather than discover evidence.
6. I am requesting the following sanctions for the time it took me to prepare and file this motion.

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a. I spent approximately **3 hours** drafting, researching and writing this notice of motion, motion declaration.

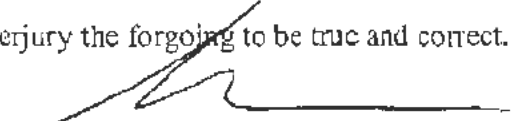
b. I anticipate attorney Boskovich will spend **4 hours** of time in travel and time to appear in court to argue the motion.

7. My average billable hourly rate and that of my co-counsel is \$250.00 per hour as this is the rate and therefore I am asking the court to award me 7 hours of time or (7 x \$250.00 plus filing fee for this motion of \$36.31) or **\$1,786.31** be awarded to me and be charged to the defendant Diocese of Stockton and Vladimir Kosina, for the cost of bringing this motion.

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

Date:

1/14/05


George J. MacKoul

JAN-05-2005 WED 02:18 PM

FAX NO.

952(e)(15.3)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, age and number, and address): VLADIMIR F. KOZINA (State Bar # 95422) MAYALL, HURLEY, KNUTSEN, SMITH & GREEN 2453 Grand Canal Boulevard Stockton, California 95207 TELEPHONE NO.: (209) 477-3833 FAX NO.: (209) 473-4818 ATTORNEY FOR (Name):	FOR CONTACT USE ONLY
NAME OF COURT: SUPERIOR COURT OF CALIFORNIA, SAN JOAQUIN COUNTY STREET ADDRESS: 222 E. Weber Avenue MAILING ADDRESS: CITY AND ZIP CODE: Stockton 95202 BRANCH NAME:	
PLAINTIFF/PETITIONER: KATHLEEN MACHADO	
DEFENDANT/RESPONDENT: FR. JOSEPH ILLIO, et al.	
DEPOSITION SUBPOENA For Personal Appearance	CASE NUMBER: CV018440

THE PEOPLE OF THE STATE OF CALIFORNIA, TO (name, address, and telephone number of deponent, if known):
Johnny Smith, Johnny Smith Investigations

1. YOU ARE ORDERED TO APPEAR IN PERSON TO TESTIFY AS A WITNESS in this action at the following time and place:

Date: January 20, 2005	Time: 10:00 a.m.	Address: 2453 Grand Canal Boulevard, Stockton, CA
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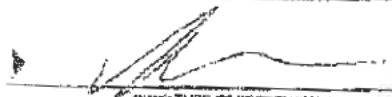
- a. As a deponent who is not a natural person, you are ordered to designate one or more persons to testify on your behalf as to the matters described in item 2. (Code Civ. Proc., § 2025, subd. (d)(6).)
- b. This deposition will be recorded stenographically through the instant visual display of testimony, and by audiotape videotape.
- c. This videotape deposition is intended for possible use at trial under Code of Civil Procedure section 2025(u)(4).
- 2. If the witness is a representative of a business or other entity, the matters upon which the witness is to be examined are as follows:

3. At the deposition, you will be asked questions under oath. Questions and answers are recorded stenographically at the deposition later they are transcribed for possible use at trial. You may read the written record and change any incorrect answers before you sign the deposition. You are entitled to receive witness fees and mileage actually traveled both ways. The money must be paid, at the option of the party giving notice of the deposition, either with service of this subpoena or at the time of the deposition.

DISOBEDIENCE OF THIS SUBPOENA MAY BE PUNISHED AS CONTEMPT BY THIS COURT. YOU WILL ALSO BE LIABLE FOR THE SUM OF FIVE HUNDRED DOLLARS AND ALL DAMAGES RESULTING FROM YOUR FAILURE TO OBEY.

Date issued: January 5, 2005

VLADIMIR F. KOZINA
(TYPE OR PRINT NAME)



ATTORNEY AT LAW
(TYPE)

(Proof of service on reverse)
DEPOSITION SUBPOENA
FOR PERSONAL APPEARANCE

Form Adopted for Mandatory Use
Judicial Council of California
Revised (10.3) effective January 1, 2002

State of California
CS 0036 0275
Government Code, § 68027.1

Law Offices of
ANTHONY BOSKOVICH
28 North First Street, 6th Floor
San Jose, California 95113-1210

Phone (408) 286-5150
Facsimile (408) 286-5170

January 9, 2005

VIA FACSIMILE AND U.S. MAIL

Mr. Vladimir Kozina
Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Boulevard, Second Floor
Stockton, California 95207-8253

Re: *Machado v. Illo, et al.*

Dear Mr. Kozina,

At your suggestion, I did some research into the issue of the deposition of Johnny Smith, plaintiffs' investigator. As I told Mr. Balestracci last week and you today, Mr. Smith's involvement in this matter was all at the behest of plaintiffs' counsel, and thereby entitled to qualified work product protection. (See *Rodriguez v. McDonnell Douglas Corporation* (1978) 87 Cal.App.3d 626 [647-48 [151 Cal.Rptr. 399, 410]; Code Civ. Proc. § 2018, subds. (b), (c))

After discussion with Mr. Balestracci, it became apparent that the confusion in this matter arose because of our inadvertent listing of Mr. Smith as a witness in responses to interrogatories. I explained to Mr. Balestracci last week, and you today, that this response was inadvertent and inappropriate, and the response would be corrected. Your comment that we cannot do that because discovery is closed is inaccurate in two respects. First, discovery is not yet closed; only the time to propound written discovery has passed. Additionally, the code specifically provides for amended responses. (Code Civ. Proc. § 2030, subd. (m)) Finally, no privileged matter has been disclosed to constitute a waiver; instead, only the inadvertent identification of counsel's agent has occurred.

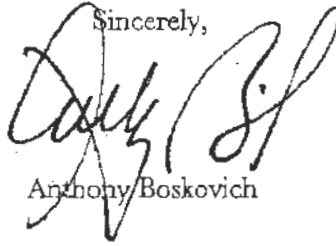
In order for you to discover the information possessed by Mr. Smith, it is your burden to establish good cause. (Code Civ. Proc. § 2018, subd. (b); see *Greyhound Corporation v. Superior Court (Clay)* (1961) 56 Cal.2d 355, 387-88 [15 Cal.Rptr. 90, 106-07])

Therefore, I must ask that you withdraw your deposition subpoena of Mr. Smith. Should you not

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do so. We will have no choice but to file a motion for protective order and seek sanctions. Thank you in advance for your anticipated courtesy and attention, and I look forward to your prompt response.

Sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Boskovich', written in a cursive style.

Anthony Boskovich

Law Offices of
ANTHONY BOSKOVICH
28 North First Street, 6th Floor
San Jose, California 95113-1210

Phone (408) 286-5150
Facsimile (408) 286-5170

January 10, 2005

VIA FACSIMILE AND U.S. MAIL

Mr. Vladimir Kozina
Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Boulevard, Second Floor
Stockton, California 95207-8253

Re: *Machado v. Ilo, et al*

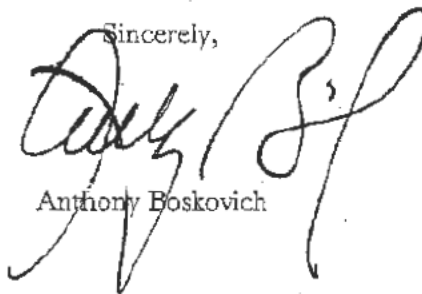
Dear Mr. Kozina,

Thank you for your frank conversation this morning. We will be checking with Mr. Smith to determine what he told the police officer in Lemoore, and will certainly make clear to anybody involved that there was never a rape of the Machado children and that it is inappropriate to represent that to anybody. I truly hope that the officer simply has mixed this case up with another one. Also, as we discussed, it is not our intention to call Mr. Smith for any purpose other than as an impeachment witness if necessary. Given that, I believe it appropriate for you to cancel his deposition.

Should you decide that you want the deposition to proceed, we will have no choice but to file a motion for protective order and sanctions no later than Friday. I hope that will not be necessary.

I look forward to hearing from you.

Sincerely,



Anthony Boskovich

LAW OFFICES

**MAYALL, HURLEY,
KNUTSEN, SMITH & GREEN**

A PROFESSIONAL CORPORATION
 2453 GRAND CANAL BOULEVARD
 STOCKTON, CALIFORNIA 95207-9253
 FAX 208 475-4818
 TELEPHONE 208 477-3831

WILLIAM W. MALE
 MARK STEPHEN ADAMS
 J. ANTHONY ABBOTT
 VLADIMIR F. KOZINA
 KRISTEN M. HEGGE
 STEVEN A. MALCOUN
 MARK E. BERRY
 WILLIAM J. GORHAM III
 JEFFERY B. SETNER
 JOSEPH A. SALAZAR, JR.
 QUINDRETH MACEDO
 JAY M. HISLOP
 DAVID D. CHENG
 ROBERT C. RODRIGUEZ
 CHAD J. WOODS
 REINA MINGYA
 AMANDA BERLIN
 CHRISTOPHER NIELSEN
 MICHAEL PHILLIPS

Admitted in Nevada

January 10, 2005

**Via Fax: (508)495-4115
 and First Class Mail**

George J. MacKoul, Esq.
 Sabbah and MacKoul
 49 Locust Street
 Falmouth, Mass 02540

Re: *Machado v. Illo, et al.*

Dear Mr. MacKoul and Mr. Boskovich:

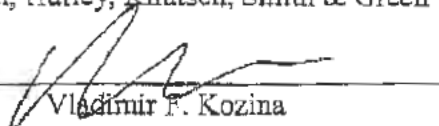
I received your letter and your comments concerning the issue of your investigator. I must reiterate that you did not assert a work product privilege in naming him. As such, you have waived any objection based on that waiver.

If you, in writing, indicate that you will not call your investigator as a witness for any purpose at trial, then I will consider canceling his deposition. Otherwise, as indicated in my earlier correspondence of this date, I will proceed.

If you have any questions, please feel free to contact me.

Very truly yours,
 Mayall, Hurley, Knutsen, Smith & Green

By


 Vladimir F. Kozina

Copy: All Counsel Via Fax and US Mail

LAW OFFICES

**MAYALL, HURLEY,
KNUTSEN, SMITH & GREEN**

A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207-8253

FAX 209 473-4818
TELEPHONE 209 477-5855

WILLIAM W. HALE
MARK STEPHEN ADAMS
J. ANTHONY ABBOTT
VLADIMIR F. KOZINA
KRISTEN M. HEGGE
STEVEN A. MALCOUN
MARK E. BERRY
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ROBERT C. RODRIGUEZ
CHAD J. WOODS
REINA MINOYA
AMANDA BERLIN
CHRISTOPHER NIELSEN
MICHAEL PHILLIPS

Admitted in Nevada

January 10, 2005

**Via Fax: (508)495-4115
and First Class Mail**

George J. MacKoul, Esq.
Sabbah and MacKoul
49 Locust Street
Falmouth, Mass 02540

Re: *Machado v. Ilo, et al.*

Dear Mr. MacKoul and Mr. Boskovich:

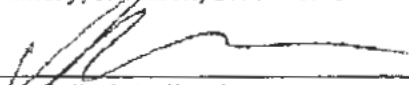
This is a follow-up to my "meet and confer" conversation with Mr. Boskovich in front of Ms. Machado's home concerning the deposition of your investigator. As was noted to Mr. Boskovich, the investigator was listed as a witness in this matter in responses to interrogatories, which have never been amended.

It is noted that, at the time these verified responses were served, no privilege was claimed with respect to your investigator, including the attorney work product privilege. It is my understanding that this waives any right to assert the privilege on your part.

Having reviewed the available law, it appears to me that I can properly proceed with the deposition and intend to do so, unless you have compelling decisional law to persuade me otherwise. You may, of course, seek a protective order, which we will have to oppose.

If you have any questions, please feel free to contact me.

Very truly yours,
Mayall, Hurley, Knutsen, Smith & Green

By 
Vladimir F. Kozina

Copy: All Counsel Via Fax and US Mail

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
Sabbah and MacKoul
2 Attorneys and Counselors at Law
49 Locust Street
3 Falmouth, Massachusetts 02540
4 508-495-4955
5 Anthony Boskovich, No. 121198
Law Offices of Anthony Boskovich
6 28 N. First Street, 6th Floor
San Jose, California 95113-1210
7
8 408-286-5150
9 Attorneys for Plaintiffs

05 JAN 18 PM 2:29
ROSA JU. IGUERRA, CLERK
BY *[Signature]* DEPUTY

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
in her capacity as Guardian ad Litem for
15 RACHEL LOMAS and AMBER LOMAS,
Plaintiffs,
16 v.
17 FATHER JOSEPH ILLO; FATHER FRANCIS
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
18 FATHER RICHARD RYAN; BISHOP STEVEN
BLAIRE; THE DIOCESE OF STOCKTON;
19 DOES 1 through 100,
Defendants.

No. CV 018440
PROOF OF SERVICE

21 I am employed in the County of Santa Clara, State of California.
22 I am over the age of 18 and not a party to the within action; my business address is 28 North
23 First Street, Sixth Floor, San Jose, CA 95113-1210.

24 On January 14, 2005, I caused to be served the foregoing **PLAINTIFFS' NOTICE OF**
25 **MOTION AND MOTION FOR PROTECTIVE ORDER TO PROHIBIT THE TAKING**
26 **OF THE DEPOSITION OF PLAINTIFFS' COUNSELS' INVESTIGATOR, JOHNNY**
27 **SMITH; REQUEST FOR MONETARY SANCTIONS AGAINST VLADIMIR R. KOZINA**

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 **AND THE DIOCESE OF STOCKTON PURSUANT TO C.C.P. SECTION 2025(i) AND**
2 **SECTION 2023; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
3 **MOTION; AND DECLARATION OF GEORGE J. MACKOUL IN SUPPORT OF**
4 **MOTION TO COMPEL AND SANCTIONS** on the parties involved in said cause by placing
5 a true and correct copy of the document listed above enclosed in a sealed envelope(s) with postage
6 thereon fully prepaid in the United States Mail at San Jose, California, addressed to the person(s) on
7 whom it is to be served as follows:

8 Paul Balestracci, Esq.
9 Neumiller & Beardslee
10 P.O. Box 20
11 Stockton, CA 95201-3020
12 Phone: (209)948-8200
13 Fax: (209)948-4910

14 George J. MacKoul
15 Sabbah and MacKoul
16 Attorneys and Counselors at Law
17 49 Locust Street
18 Falmouth, Massachusetts 02540

19 and by placing a true and correct copy of the document(s) listed above enclosed in a sealed
20 envelope(s) and causing said envelope(s) to be delivered to an overnight delivery carrier with delivery
21 fees provided for, addressed to the following person(s) on whom it is to be served

22 Michael Coughlan, Esq.
23 Coughlan & O'Rourke, LLP
24 3031 W. March Lane, Suite 210 West
25 Stockton, CA 95219
26 Phone: (209)952-3878

27 Vladimir F. Kozina, Esq.
28 Mayall, Hurley, Knutsen, Smith & Green
29 2453 Grand Canal Blvd., 2nd Floor
30 Stockton, CA 95207-8253

Executed on 14 January 2005, at San Jose, California.

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


PAMELA WILSON

1 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**
A Professional Corporation
2 2453 Grand Canal Boulevard, Second Floor
Stockton, California 95207-8253
3 Telephone (209) 477-3833
VLADIMIR F. KOZINA, ESQ.
4 CA State Bar No. 095422
MICHAEL L. PHILLIPS, ESQ.
5 CA State Bar No. 232978

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ROSA JUNG, CLERK
Pamela Edwards
DEPUTY

6 **NEUMILLER & BEARDSLEE**
A Professional Corporation
7 P.O. Box 20
Stockton, CA 95201-3020
8 Telephone: (209)948-8200
PAUL N. BALESTRACCI
9 CA State Bar No. 083987

10 Attorneys for Defendants
Father Joseph Illo, Monsignor Richard J. Ryan, Bishop
11 Stephen E. Blaire, And The Roman Catholic Bishop Of Stockton,
a Corporation Sole

12 \$36.30 - 200501078038

13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

14
15 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE No. CV018440**
16 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,) NOTICE OF MOTION AND MOTION FOR
17 **) CONTINUANCE**
Plaintiffs,)
18 **)**
vs.)
19 **)**
FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,) DATE: FEBRUARY 2, 2005**
BISHOP STEVEN BLAIRE AND THE DIOCESE) TIME: 9:00 A.M.
21 **OF STOCKTON, ET AL.,) DEPARTMENT: 41**
) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
22 **Defendants.) TRIAL DATE: FEBRUARY 22, 2005**
)
23 **)**

24 To plaintiff and her attorney of record:

25 NOTICE IS HEREBY GIVEN that on the above date, time and department, or as soon as the
26 matter may be heard in the Superior Court of California for the County of San Joaquin, 222 East
27 Weber Avenue, Stockton, California, 95202, defendant will, and hereby does, move for an order

28 Defendants Notice Of Motion And Motion For Continuance

1 continuing the trial heretofore set for February 22, 2005. The motion will be made on the
2 grounds that defendant's trial counsel, Vladimir Kozina, will be unavailable due to his required
3 participation in the trial of another matter set before this court, *Cruz v. Khashchuk*, case number
4 CV015525.

5 The motion will be based on this notice of motion, on the declaration of Vladimir Kozina,
6 the memorandum of points and authorities served and filed herewith, on the records and file
7 herein, and on such evidence as may be presented at the hearing of the motion.

8 Dated: January 6, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

9
10 By: 

Vladimir F. Kozina, Esq.

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN}

I am a citizen of the United States. My business address is 2453 Grand Canal Boulevard, Second Floor, Stockton, California 95207. I am employed in the County of San Joaquin. I am over the age of 18 years and not a party to the within cause. On the date set forth below, I served the document(s) described as follows on the following person(s) in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

DOCUMENT(S) SERVED: NOTICE OF MOTION AND MOTION FOR CONTINUANCE;
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF VLADIMIR F.
KOZINA

NAME(S) AND ADDRESS(ES) OF PERSON(S) SERVED:

GEORGE J. MACKOUL, ESQ. Via Federal Express
SABBAH AND MACKOUL
49 LOCUST STREET
FALMOUTH, MASS 02540

ANTHONY BOSKOVICH, ESQ. Via California Overnight Mail
28 NORTH FIRST ST., 6TH FLOOR
SAN JOSE, CA 95113-1210

PAUL N. BALESTRACCI, ESQ. Via California Overnight
NEUMILLER & BEARDSLEE
~~P.O. BOX 20~~ 509 W. Weber Ave.
STOCKTON, CA 95201-3020

MICHAEL COUGHLAN, ESQ. Via California Overnight
LAW OFFICES OF MICHAEL D. COUGHLAN
3031 W. MARCH LANE, #210 WEST
STOCKTON, CA 95219

BY FACSIMILE Facsimile to the Facsimile telephone number(s) and at the time(s) indicated above, on the date of execution of this document, as set forth below.

BY MAIL. I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States Mail at Stockton, CA. I am readily familiar with my firm's practice for collection and processing of correspondence for mailing with the United States Postal Service, to wit, that correspondence will be deposited with the United States Postal Service this same day in the ordinary course of business. I sealed said envelope(s) and placed it/them for collection and mailing on the date of execution of this document, as set forth below, following ordinary business practices to the persons above where indicated.

BY PERSONAL DELIVERY. I caused such document to be delivered to the party in said action by delivering a true copy thereof to the law offices of the person listed above where indicated (By Personal Service).

[xx] BY EXPRESS MAIL; Overnight Delivery. I caused a true copy thereof to be delivered by depositing for collection on this same date, a sealed envelope addressed to the person(s) at the address(es) set forth above, into a depository box of the overnight service listed next to each address, at Stockton, California.

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
2 Served and executed on January 6, 2005, at Stockton, California.

3 
4 _____
5 SHERI SIGMAN
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16
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19
20
21
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27
28

1 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**
A Professional Corporation
2 2453 Grand Canal Boulevard, Second Floor
Stockton, California 95207-8253
3 Telephone (209) 477-3833
VLADIMIR F. KOZINA, ESQ.
4 CA State Bar No. 095422
MICHAEL L. PHILLIPS, ESQ.
5 CA State Bar No. 232978

6 **NEUMILLER & BEARDSLEE**
A Professional Corporation
7 P.O. Box 20
Stockton, CA 95201-3020
8 Telephone: (209)948-8200
PAUL N. BALESTRACCI
9 CA State Bar No. 083987

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

FILED
05 JAN -7 PM 1:19
ROSALINDA J. JONDERO, CLERK
BY *Pamela Edwards*

12
13 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

14
15 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE NO. CV018440**
16 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
LOMAS AND AMBER LOMAS,) MEMORANDUM OF POINTS AND AUTHORITIES
17 **) IN SUPPORT OF MOTION FOR CONTINUANCE**
Plaintiffs,)
18 **)**
vs.)
19 **)**
FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)**
BISHOP STEVEN BLAIRE AND THE DIOCESE) DATE: FEBRUARY 2, 2005
21 **OF STOCKTON, ET AL.,) TIME: 9:00 A.M.**
) DEPARTMENT: 41
22 **Defendants.) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS**
) TRIAL DATE: FEBRUARY 22, 2005
23 **)**

24 **STATEMENT OF FACTS**

25 As the court is well aware, this lawsuit arises out of allegations by plaintiffs of alleged
26 sexual misconduct and defamation against defendants. As trial in this matter approached
27 defendants retained Vladimir F. Kozina as trial counsel. Mr. Kozina was retained on November
28 Defendants P&A in Support of Motion to Continue Trial

1 29, 2004 and an Association of Attorney was executed on December 1, 2004. (Declaration of
2 Vladimir F. Kozina, paragraph 2) Mr. Kozina was retained by defendants based on his trial
3 experience, skill, and expertise. At the time Mr. Kozina accepted this assignment, he did not
4 anticipate any conflict with the trial date of February 22, 2005. (Declaration of Vladimir F.
5 Kozina, paragraph 4) On December 3, 2004 a trial setting conference was held in this court on a
6 matter Mr. Kozina had previously been trying, *Cruz v. Khashchuk*, which resulted in a mistrial
7 based on plaintiff's misconduct. At that time the presiding judge of this court, the judge who
8 would be the trial judge in *Cruz*, unexpectedly set the *Cruz* matter for retrial on February 14,
9 2004. (Declaration of Vladimir F. Kozina, paragraph 7) Upon this order, realizing the conflict
10 that than existed, Mr. Kozina vigorously attempted to have the *Cruz* trial date continued.
11 (Declaration of Vladimir F. Kozina, paragraph 8) Such request was denied and the judge
12 unequivocally indicated the *Cruz* matter would proceed as currently scheduled. (Declaration of
13 Vladimir F. Kozina, paragraph 8)

14 Once it was ascertained that the *Cruz* matter would not be continued, Mr. Kozina notified
15 plaintiff's counsel of the conflict in an attempt to resolve the conflict by way of a stipulated
16 continuance. (Declaration of Vladimir F. Kozina, paragraph 9) Plaintiff's counsel was not
17 amenable to this solution. (Declaration of Vladimir F. Kozina, paragraph 10) Mr. Kozina is now
18 faced with the impossible task of being in two courtrooms, at the same time, trying two separate
19 matters.

20 SUMMARY OF ARGUMENT

21 A court may grant a continuance before or during trial on an affirmative showing of good
22 cause. The unavailability of the trial attorney, when he is engaged in the trial of another case,
23 should be considered good cause for continuance of a trial date. Here, defendant's trial attorney,
24 Vladimir F. Kozina, will be engaged in the trial of another matter before this court on the date at
25 which trial in this matter is set to begin and therefore will be unavailable to participate in the trial
26 of this matter as currently scheduled. As such, good cause exists for the court to grant
27 defendant's motion to continue the trial date in this matter.

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Legal Argument

I. **A Court May Grant A Continuance Of A Trial Date Upon The Showing Of Good Cause**

A court may grant a continuance before or during trial on an affirmative showing of good cause. (Cal. Rules of Ct., Rule 375(c)).

1. **The Unavailability Of A Trial Attorney When He Is Engaged In The Trial Of Another Case Should Be Considered Good Cause**

California Rules of Court, rule 375, outlines circumstances that may constitute good cause for a continuance. As recently discussed in Oliveros v. County of Los Angeles, the circumstances to be considered in deciding whether good cause exists include “the proximity of the trial date, . . . the length of the continuance requested, . . . the prejudice that other parties or witnesses will suffer as a result of the continuance, . . . the court's calendar . . . , *and whether trial counsel is engaged in another trial.*” (Cal. Rules of Court, rule 375; Oliveros v. County of Los Angeles (2004) 120 Cal.App.4th 1389, 1399). Rule 375 further emphasizes that “the court must consider all the facts and circumstances that are relevant to the determination.” (Cal. Rules of Court, rule 375(d).)

In Oliveros v. County of Los Angeles, it was held the trial court had committed error in denying the request of defendant County of Los Angeles for a trial continuance due to the engagement of its attorney in another trial. Id. at 1391. In Oliveros, defendant retained an attorney, George Peterson, to try the matter based on his extensive trial experience and ongoing relationship with defendant. At the time Mr. Peterson accepted the assignment he was unaware of any potential conflict that would have prevented him from participating in the trial. Less than one week before the trial in Oliveros was set to begin, Mr. Peterson learned that an anticipated stipulated continuance of another, older, matter set to begin trial on July 8, 2002, was not going

1 to occur. Id. at 1392. As such, Mr. Peterson was faced with the impossible task of being in two
2 courtrooms, trying two cases, at the same time. He sought a continuance in the Oliveros matter,
3 but the trial court denied his request. On appeal, this denial was found to be error on the part of
4 the trial court.

5 The facts in Oliveros are similar to those present here. Defendants have retained
6 Vladimir F. Kozina as trial counsel in this matter. Due to circumstances beyond Mr. Kozina's
7 control, he will be unable to participate in the trial of this matter as currently scheduled due to his
8 required participation in the trial of another matter before this court, *Cruz v. Khashchuk*, case
9 number CV015525, which is set to begin on February 14, 2005. Trial of the *Cruz* matter is likely
10 to take in excess of 3 months given the extent of plaintiff's damages, number of witnesses
11 expected to testify, and complexity of issues involved.

12 As in Oliveros, at the time Mr. Kozina accepted the trial date in this matter, he could not
13 have reasonably anticipated the conflict in trial dates that is now present. Mr. Kozina was
14 retained by defendants on November 29, 2004 and an Association of Attorney was executed on
15 December 1, 2004. Trial in *Cruz v. Khashchuk* actually began in September of 2004 and
16 commenced for five weeks prior to a mistrial due to plaintiff's misconduct. On December 3,
17 2004, in a wholly unanticipated event, the presiding judge of this court, who will be the trial
18 judge in *Cruz*, set the retrial for February 14, 2005. When the judge was informed of the
19 calendar conflict, and request was made to continue the *Cruz* matter, he unequivocally indicated
20 the *Cruz* matter would proceed on February 14, 2005.

21 Defendant's attorney is now faced with the impossible task of being in two places at once.
22 As in Oliveros, good cause exists here for the court to grant defendant's motion for continuance
23 of the current trial date in this matter based on the unavailability of defendant's trial attorney.
24

25 /

II. LAWYERS ARE NOT FUNGIBLE

1
2 The court in Oliveros, discussed above, further held that lawyers are not fungible goods.
3 Id. at 1397. In Oliveros plaintiff's counsel, in opposing defendant's motion for a continuance,
4 argued that George Peterson's unavailability as trial counsel should not amount to good cause
5 because Mr. Peterson was a member of a large, 80 plus attorney, law firm and should be able to
6 recruit another attorney within his firm to try the matter. Defendant successfully argued that Mr.
7 Peterson was retained based on his trial experience and expertise and could not simply be
8 replaced by another arbitrary attorney. The court held that regardless of the number of attorneys
9 within his firm, defendants were entitled to Mr. Peterson's personal representation.
10

11 It is anticipated plaintiffs will argue a continuance should not be granted in this matter
12 because Mr. Kozina is a member of a law firm and should be able to recruit another attorney to
13 try this matter. As it did in Oliveros, this argument should fail here. Just as in Oliveros,
14 defendant has retained Vladimir F. Kozina as trial counsel based on his trial experience and
15 expertise. The fact that Mr. Kozina is a member of a law firm comprised of 19 attorneys should
16 have no bearing on whether or not a continuance is granted in this matter. Defendants are
17 entitled to trial counsel of their choice and have chosen to retain Vladimir F. Kozina based on his
18 trial experience, skills, and expertise. Any argument that Mr. Kozina's trial experience, skills,
19 and expertise can be adequately duplicated by any other attorney within his firm must be
20 dismissed.
21

III. DEFENDANT HAS BEEN DILIGENT IN SEEKING A CONTINUANCE IN THIS MATTER

22
23 The court in Lazarus v. Titmus (1998) 64 Cal. App. 4th 1242, 1250. held that a
24 continuance could be denied if counsel is not diligent in seeking the continuance after it becomes
25 apparent that a continuance is needed. Lazarus v. Titmus As explained above, defense counsel
26 did not become aware of this conflict until December 3, 2004. Following this discovery defense
27

1 counsel vigorously attempting to seek a continuance of the *Cruz* matter, however, was informed
2 on December 27, 2004 that the matter would be going to trial as scheduled on February 14, 2005.
3 On December 28, 2004 defense counsel notified plaintiff's counsel of the conflict in an attempt to
4 resolve the conflict by way of a stipulated continuance. Plaintiff's counsel refused to stipulate to
5 any continuance of the trial date, necessitating this motion. At all times, Defendant and defense
6 counsel have acted in a diligent manner in attempting to resolve this conflict and notifying other
7 parties and the court of their need for a continuance.

8
9 **CONCLUSION**

10
11 A court may grant a continuance before or during trial on an affirmative showing of good
12 cause. (Cal. Rules of Ct., Rule 375(c)). The unavailability of the trial attorney, when he is
13 engaged in the trial of another case, should be considered good cause for continuance of a trial
14 date. Here, defendant's trial attorney, Vladimir F. Kozina, will be engaged in the trial of another
15 matter before this court on the date at which trial in this matter is set to begin and therefore will
16 be unavailable to participate in the trial of this matter as currently scheduled. Defendants are
17 entitled to representation of their choice and have retained Vladimir F. Kozina based on his trial
18 experience, skills, and expertise. Lawyers are not fungible or readily interchangeable. As such,
19 good cause exists for the court to grant defendant's motion to continue the trial date in this matter
20 to a date consistent with the court and counsel's calendars in order to allow these defendants to
21 have their right to counsel of their choice..

22
23 Dated: January 6, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

24
25 By: _____


Vladimir F. Kozina

1 **MAYALL, HURLEY, KNUTSEN, SMITH & GREEN**
A Professional Corporation
2 2453 Grand Canal Boulevard, Second Floor
Stockton, California 95207-8253
3 Telephone (209) 477-3833
4 **VLADIMIR F. KOZINA, ESQ.**
CA State Bar No. 095422

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5 **NEUMILLER & BEARDSLEE**
A Professional Corporation
6 P.O. Box 20
Stockton, CA 95201-3020
7 Telephone: (209)948-8200
8 **PAUL N. BALESTRACCI**
CA State Bar No. 083987

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

12 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

14 **KATHLEEN MACHADO AS AN INDIVIDUAL**) **CASE NO. CV018440**
15 **AND AS GUARDIAN AD LITEM FOR RACHEL**)
16 **LOMAS AND AMBER LOMAS,**) **DECLARATION OF VLADIMIR F. KOZINA IN**
17 **Plaintiffs,**) **SUPPORT OF MOTION FOR CONTINUANCE**
18 **vs.**)
19 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA**) **DATE: FEBRUARY 2, 2005**
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,**) **TIME: 9:00 A.M.**
21 **BISHOP STEVEN BLAIRE AND THE DIOCESE**) **DEPARTMENT: 41**
22 **OF STOCKTON, ET AL.,**) **TRIAL JUDGE: HON. ELIZABETH HUMPHREYS**
Defendants.) **TRIAL DATE: FEBRUARY 22, 2005**

23
24 I, VLADIMIR F. KOZINA, declare as follows:

25 I am attorney licensed to practice law in the State of California, and am a partner with the
26 law firm of Mayall, Hurley, Knutsen, Smith & Green, attorneys of record for defendants FATHER
27 JOSEPH ILLO, MONSIGNOR RICHARD J. RYAN, BISHOP STEPHEN E. BLAIRE, AND THE ROMAN
28 Declaration Of Vladimir F. Kozina In Support Of Motion For Continuance

1 CATHOLIC BISHOP OF STOCKTON, a Corporation Sole. I make this declaration based on personal
2 knowledge and, if called to testify, could and would testify consistently herewith.

3 2. I was retained by defendants as trial counsel in this matter on November 29, 2004.

4 3. I executed an Association of Attorney in this matter dated December 1, 2004.

5 4. At the time I accepted the assignment as trial counsel in this matter I did not anticipate
6 any conflict with the trial date of February 22, 2005.

7 5. I am trial counsel for defendant Advantage Systems, Inc. in the matter of *Cruz v.*
8 *Khashchuk*, CV015525, which is also venued in the Superior Court of San Joaquin County.

9
10 6. Trial in the *Cruz* matter began in September of 2004 and resulted in a mistrial after five
11 weeks based on plaintiff's misconduct.

12 7. On December 3, 2004 the presiding judge of this court, the Honorable Bob McNatt, who
13 will also be the trial judge in the *Cruz* matter, unexpectedly set the new trial to begin on February
14 14, 2005.

15 8. I informed Judge McNatt in the *Cruz* matter of the calendar conflict with this matter, the
16 fact that I was retained for trial on November 29, 2004 and had not anticipated the *Cruz* matter to
17 be re-set in such a short time frame and was unequivocally informed that no continuance in the
18 *Cruz* matter would be granted and it would proceed to trial on February 14, 2005.

19 9. I informed plaintiff's counsel of this conflict on December 28, 2004 in an attempt to
20 resolve this conflict by way of a stipulated continuance. A true and correct copy of
21 correspondence from Vladimir F. Kozina to plaintiff's counsel dated December 28, 2004 is
22 attached hereto as Exhibit A.

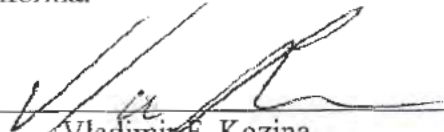
23
24 10. I was informed by plaintiff's counsel on December 28, 2004 that they would not stipulate
25 to any continuance in this matter. A true and correct copy of correspondence from plaintiff's
26 counsel to Vladimir F. Kozina dated December 28, 2004 is attached hereto as Exhibit B.

1 11. That a continuance is required since trial counsel will not be available by virtue of being
2 involved in another trial matter. That my clients are entitled to counsel of their choice and a
3 failure to grant the continuance would result in a denial of these rights and of their due process
4 rights in this litigation.

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

7 Executed on January 6, 2005 at Stockton, California.

8
9 By _____



Vladimir F. Kozina

LAW OFFICES
MAYALL, HURLEY, KNUITSEN, SMITH & GREEN
A PROFESSIONAL CORPORATION
2453 GRAND CANAL BOULEVARD
SECOND FLOOR
STOCKTON, CALIFORNIA 95207-8253

LEN H. HONEY
1986-1992
EDWIN MAYALL
1987-1988

JOHN J. HURLEY
CLARENCE D. KNUITSEN
ALAN B. SMITH
DENNIS J. GREEN
RETIRED

FAX (209) 477-4818

TELEPHONE (209) 477-3833

WILLIAM W. HALE
MARK STEPHEN ADAMS
J. ANTHONY ABBOTT
VLADIMIR F. KOZINA
KRISTEN M. HEGGE
STEVEN A. MALCOLM
MARK E. BERRY
WILLIAM J. GORHAM III
JOSEPH A. SALAZAR, JR.
JEFFREY B. SETNESS
QUENDRITH L. MACEDO
JAY M. HISLOP
DAVID CHENG
ROBERT RODRIGUEZ
CHAD J. WOOD
REIFA G. MINOYA
AMANDA R. BERLIN
CHRISTOPHER G. NIELSEN
MICHAEL L. PHILLIPS

December 28, 2004

George J. MacKoul, Esq.
Sabbah and Mackoul
49 Locust Street
Falmouth, Mass 02540

Via Fax: (508)495-4115

Anthony Boskovich, Esq.
28 North First Street, 6th Floor
San Jose, CA 95113-1210

Via Fax: (408)286-5170

Re: *Machado v. Illo, et al.*

Dear Messrs. MacKoul and Boskovich:

I am in receipt of Mr. MacKoul's correspondence to Paul Balestracci dated December 18, 2004. Unfortunately, yesterday I attended a settlement conference in a matter entitled *Cruz v. Khashchuk*, in San Joaquin County Superior Court. There, the presiding judge stated that that case will go to trial as scheduled on February 14, 2005.

By way of history, the *Cruz* case was previously in its 5th week of trial when a mistrial was declared and the new trial date of February 14, 2005 assigned. The new trial is likely to exceed three months due to the court's 3 day trial schedule. It will be impossible for me to be able to try the *Machado* matter on February 22, 2005.

In light of the above, it is necessary that I seek a continuance in the *Machado* matter. I direct your attention to *Oliveros v. County of Los Angeles* (2004), 120 Cal.App.4th 1389 which points out that in circumstances such as these, a continuance should be granted. Please let me know if it will be necessary for me to file a formal motion.

I will be out of the office until January 3, 2005, but will be happy to discuss this matter with you at that time.

Very truly yours,
Mayall, Hurley, Knutsen, Smith & Green

By V. Kozina
VLADIMIR F. KOZINA *mk*

December 28, 2004
Page 2

VFK/sas

cc Paul N. Balestracci, Esq. Via Fax: (948-4910)

SABBAH AND MACKOUL

A PROFESSIONAL CORPORATION
ATTORNEYS AND COUNSELORS AT LAW

49 Locust Street
Falmouth, Massachusetts 02540

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

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

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

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

Please reply to: FALMOUTH OFFICE

December 28, 2004

File no. Machado/CA02-0001

Mr. Vladimir F. Kozina
Attorney at Law
Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Boulevard
Second Floor
Stockton, California 95207-8253

VIA FACIMILE AND U.S. MAIL 209-473-4818

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

Dear Mr. Kozina:

Please allow this letter to serve as a response to your letter on this date.

First, Attorney Boskovich and I were quite surprised to find out for the **first** time, **today**, approximately **56** days prior to trial, that you are now the trial counsel on this matter.

While I am sympathetic to your position, please understand ours. This case is **over** two years old. Judge Humphrey's asked attorney Balestracci in March of 2004 if he was available for trial in February of 2005. He represented to the court that he was available to try the case on that date, as trial counsel. The other counsel in the case did the same. No representations were ever made to the court by attorney Balestracci that he was going to be using substitute trial counsel. Mr. Balestracci is a partner in one of the largest firms in Stockton and has tried cases before on behalf of the church. I suspect he could

adequately prepare for this case in the time remaining, as he has been intimately involved in the case since its inception, and is to this day, still fully engaged in settlement negotiations with the mediator, Jack Williams. He also has multiple associates he can call upon to prepare for trial, along with a similar battalion from your firm.

Please understand that any continuance of the trial date in this matter will be highly prejudicial to the plaintiff/children and will place an unnecessary hardship on plaintiff's counsel. I have gone to substantial difficulty in preparing to temporarily move to the west coast for the month of February in order to try this case. This means not only leaving my family, but also rearranging several matters set for trial here in Massachusetts in order to be available to try this case in California.

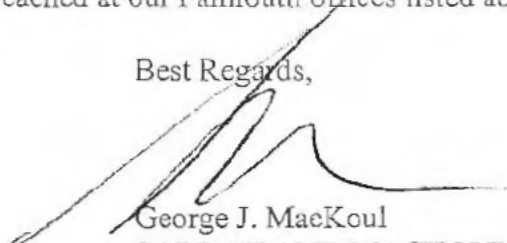
Mr. Boskovich also has a very busy trial calendar and has made accommodations to it in order to try this matter in February.

In short, we cannot stipulate to any continuances of this matter and we will politely oppose any motion you file with the court.

You may want to re-read the *Oliveros v. County of Los Angeles* case cited in your letter. I do not think the facts of that case are analogous to this case.

I hope your vacation is going well, and if you wish to discuss this further, please give me a call upon your return. I can be reached at our Falmouth offices listed above.

Best Regards,



George J. MacKoul
SABBAH AND MACKOUL

GJM

CC: Mr. Boskovich Esq.
Mr. Balestracci Esq.
Mr. Coughlin Esq.
Jack Williams Esq.
(All by facsimile and first class mail).

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

DE
FILED
CLERK OF COURT - STOCKTON

04 DEC 14 AM 7:59

ROSA DOMINGUEZ, CLERK

Jocinda Reed
DEPUTY

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

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)
12 and AMBER LOMAS)

Case No. CV 018440

13 Plaintiffs,

ASSOCIATION OF COUNSEL

14 vs.

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

20 Defendants.

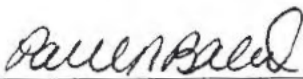
20 Neumiller & Beardslee, being the attorneys of record for Defendants FATHER JOSEPH
21 ILLO, MONSIGNOR RICHARD J. RYAN, BISHOP STEPHEN E. BLAIRE, and THE ROMAN
22 CATHOLIC BISHOP OF STOCKTON, a Corporation Sole in this action, hereby associates Mayall,
23 Hurley, Knutsen, Smith & Green as co-counsel of record for Defendants FATHER JOSEPH ILLO,
24 MONSIGNOR RICHARD J. RYAN, BISHOP STEPHEN E. BLAIRE, and THE ROMAN
25 CATHOLIC BISHOP OF STOCKTON, a Corporation Sole in this matter. The office address and
26 telephone number of such associated counsel is:

27
28
Association of Counsel

1
2 Mayall, Hurley, Knutsen, Smith & Green
3 2453 Grand Canal Blvd., 2nd Floor
4 Stockton, CA 95207-8253
5 Telephone: (209) 477-3833
6 Facsimile: (209) 473-4818

7
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13
14
15
16 Dated: December 1, 2004

NEUMILLER & BEARDSLEE
A PROFESSIONAL CORPORATION

17
18 By: 
19 PAUL N. BALESTRACCI
20 Attorney for Defendants,
21 FATHER. JOSEPH ILLO, MONSIGNOR
22 RICHARD J. RYAN, BISHOP STEPHEN E.
23 BLAIRE, and THE ROMAN CATHOLIC
24 BISHOP OF STOCKTON, a Corporation Sole

25
26
27
28 Above association accepted.

Dated: December 1, 2004

1014
MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

By: 
VLADIMIR F. KOZINA

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
Sabbah and MacKoul
2 Attorneys and Counselors at Law
49 Locust Street
3 Falmouth, Massachusetts 02540
4 508-495-4955
5 Anthony Boskovich, No. 121198
Law Offices of Anthony Boskovich
6 28 N. First Street, 6th Floor
San Jose, California 95113-1210
7
8 408-286-5150
9 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
in her capacity as Guardian ad Litem for
15 RACHEL LOMAS and AMBER LOMAS,
Plaintiffs,
16 v.
17 FATHER JOSEPH ILLO; FATHER FRANCIS
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
18 FATHER RICHARD RYAN; BISHOP STEVEN
BLAIRE; THE DIOCESE OF STOCKTON;
19 DOES 1 through 100,
Defendants.

No. CV 018440

NOTICE OF ENTRY OF ORDER

21 TO EACH PARTY AND THEIR ATTORNEY OF RECORD:

22 PLEASE TAKE NOTICE that on October 6, 2004, the Court entered its **ORDER**
23 **GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTIONS TO**
24 **COMPEL FURTHER RESPONSES TO DEMANDS TO PRODUCE DOCUMENTS,**
25 **FORMINTERROGATORIES, SPECIAL INTERROGATORIES, AND REQUESTS FOR**
26 **ADMISSIONS PROPOUNDED ON DEFENDANTS ILLO, BLAIRE, AND DIOCESE OF**

FILED
CLERK OF SUPERIOR COURT - STOCKTON
OCT 21 PM 1:03
BY Anna A. Guerrero CLERK
DEPUTY

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 STOCKTON, in the above Matter, a true and correct copy of which order is attached hereto as
2 Exhibit "A".

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DATED: October 18, 2004

LAW OFFICES OF ANTHONY BOSKOVICH



ANTHONY BOSKOVICH
Attorney for Plaintiffs

OCT 06 2004
Filed
ROSA JUNGBERG, CLERK
By SONYA FARNSWORTH
DEPUTY

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
2 Sabbah and MacKoul
3 Attorneys and Counselors at Law
4 49 Locust Street
5 Falmouth, Massachusetts 02540
6 508-495-4955

7 Anthony Boskovich, No. 121198
8 Law Offices of Anthony Boskovich
9 28 N. First Street, 6th Floor
10 San Jose, California 95113-1210
11 408-286-5150
12 Attorneys for Plaintiffs

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
15 in her capacity as Guardian ad Litem for
16 RACHEL LOMAS and AMBER LOMAS,
17 *Plaintiffs,*
18 v.
19 FATHER JOSEPH ILLO; FATHER FRANCIS
20 JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
21 FATHER RICHARD RYAN; BISHOP STEVEN
22 BLAIRE; THE DIOCESE OF STOCKTON;
23 DOES 1 through 100,
24 *Defendants.*

No. CV 018440

ORDER GRANTING IN PART
AND DENYING IN PART
PLAINTIFFS' MOTIONS TO
COMPEL FURTHER RESPONSES
TO DEMANDS TO PRODUCE
DOCUMENTS, FORM
INTERROGATORIES, SPECIAL
INTERROGATORIES, AND
REQUESTS FOR ADMISSIONS
PROPOUNDED ON
DEFENDANTS ILLO, BLAIRE,
AND DIOCESE OF STOCKTON

23 The above-entitled matter came on for hearing on 3 March 2004 before the Honorable
24 Elizabeth Humphreys, judge presiding. Plaintiffs and moving parties appeared through their counsel
25 George MacKoul and Anthony Boskovich. Defendants Illo, Ryan Blaire, and the Diocese of

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1 Stockton appeared through their counsel Paul Balestracci. Defendants Arakal appeared through his
2 counsel, Michael Coughlan.

3 Having reviewed the moving papers and evidence, and upon hearing the argument of
4 counsel,

5
6 **IT IS ORDERED** that plaintiffs' motions to compel as enumerated below are **GRANTED**
7 **IN PART and DENIED IN PART** as follows:

8
9 **PLAINTIFF RACHEL LOMAS' REQUEST FOR**
10 **PRODUCTION OF DOCUMENTS, SET ONE, PROPOUNDED**
11 **UPON THE ROMAN CATHOLIC BISHOP OF STOCKTON**

12 Request 1

13 Plaintiff's motion to compel further responses and production of documents is **DENIED**.

14 This request demands reports regarding past reports of sexual abuse to minors. The foreseeable
15 event must characteristic of the activities of the enterprise. While sexual abuse in the Roman
16 Catholic Church has received substantial publicity since 1986 when *Rita M. v. Roman Catholic Church*
17 (1986) 187 Cal. App. 3d 1453, 1461 was decided, this behavior/activity is not characteristic of the
18 Church's enterprise.

19 Request 4

20 Assuming that this request is for Father Illo's personnel file, plaintiffs' motion is **GRANTED**.

21 Defendant must turn over the personnel file as it relates to internal investigations as they relate to
22 Penal Code section 11166 and Father Joseph and claims relating to defamation by Father Illo. (See
23 *Conley v. Roman Catholic Archbishop* (2000) 85 Cal. App. 4th 1126, 1132-33; See Plaintiff's Reply in
24 Support of Motion regarding First Amendment regarding Fr. Joseph)

25 //

26 //

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Request 6

This request asks for documents regarding any complaints of misconduct made against Father Illo for the past ten years. Plaintiffs' motion is **GRANTED**. Defendant must produce all documents in its possession responsive to this request.

Request 7

This request is for documents regarding communications among the defendants. The motion is **DENIED**. The documents are protected by the common interest doctrine. (See *Oxy v. Superior Court* (2004) 115 Cal.App.4th 874, 890-91. In any event, defendants indicated that all documents would be voluntarily produced.

Requests 8 through 14

These requests demand documents regarding what might be broadly categorized as "witness statements". Plaintiffs' motion to compel production is **GRANTED**. Defendant must produce all documents in its possession responsive to these requests. Defendants have not cited a specific legal exception to discovery based on a "canonical investigation". Given the three factors to be weighed in *Bollard v. California Province* (9th Cir. 1999) 196 F. 3d 940, 946-48, Defendant must produce the statements and may redact therefrom any statements regarding competing interpretations of church doctrine and/or practice. The defendant may also redact any statements articulating a religious justification for the church's personnel decisions. All redacted documents must clearly show where redactions were made.

Requests 17 through 19 and 21

These are requests for documents supporting responses to interrogatories. Plaintiffs' motion to compel is **GRANTED**. Documents must be produced except as set forth regarding Requests 8-

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1 14. Any documents being withheld must be identified per Code of Civil Procedure section 2031,
2 subdivision (g)(3).

3
4 Request 28

5 This request is for documents regarding Form Interrogatory 15.1. The motion to compel
6 is **GRANTED**. Defendant must answer the Request in accordance with the procedure established
7 in Code of Civil Procedure section §2031, subdivision (g).

8
9 Request 29

10 This request asks for documents regarding communications with Sister Barbara. Plaintiff's
11 motion is **GRANTED**. Documents must be produced except as set forth regarding Requests 8-14.
12 Any documents being withheld must be identified per Code of Civil Procedure section 2031,
13 subdivision (g)(3).

14
15 Request 30

16 This request is for Father Arakal's telephone records. The motion as to this request is
17 **DENIED**. (See Cal. Const., art. I, § 1)

18
19
20 **PLAINTIFF RACHEL LOMAS' FORM INTERROGATORIES, SET ONE,
21 PROPOUNDED UPON THE ROMAN CATHOLIC BISHOP OF STOCKTON**

22 Interrogatory 4.2

23 The motion to compel is **GRANTED**. This interrogatory must be fully and completely
24 answered.

25 //

26 //

27

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1 Interrogatory 12.1

2 The motion to compel is **GRANTED**. The interrogatory must be rephrased by plaintiff to
3 remove the ambiguity, and defendant must respond fully and completely.
4

5 Interrogatory 12.2

6 The motion to compel is **GRANTED**. The names, addresses, telephone numbers and
7 occupations of persons who are potential witnesses are discoverable. (See generally, *Felloses v. Superior*
8 *Court* (1980) 108 Cal. 3d 55, 69) Plaintiff may not, however, compel disclosure of every individual
9 interviewed on behalf of the defendants, when the response would reveal persons the defendants'
10 attorney considered to be important enough to interview. (*Nacht v. Superior Court* (1996) 47 Cal. 4th
11 214, 217-218)
12

13 Interrogatories 12.3, 12.6, and 15.1

14 The motion to compel is **GRANTED**. Defendant has indicated that it will fully and
15 completely respond to these interrogatories.
16

17 Interrogatory 17.1(d)

18 The motion to compel is **GRANTED**. Defendant is ordered to provide a full and complete
19 response to this interrogatory. Defendant may produce documents instead of identifying them,
20 pursuant to Code of Civil Procedure section 2030, subdivision (f)(2).
21 //
22 //
23 //
24 //
25 //
26 //

1 PLAINTIFF RACHEL LOMAS' SPECIAL
2 INTERROGATORIES, SET ONE, PROPOUNDED UPON THE
3 DIOCESE OF STOCKTON

4 Interrogatory 7

5 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
6 to this interrogatory. An interrogatory must be answered if "the nature of the information sought
7 is apparent". (*Deyo v. Kilbourne* (1976) 84 Cal. App. 3d 771, 783)

8
9 Interrogatory 8

10 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
11 to this interrogatory. An interrogatory must be answered if "the nature of the information sought
12 is apparent". (*Deyo v. Kilbourne* (1976) 84 Cal. App. 3d 771, 783)

13
14 Interrogatory 9

15 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
16 to this interrogatory. An objection based on opinion is not valid. (Code Civ. Proc. §2030, subd.(c)(6))
17 The interrogatory does not ask for communications between a priest and a community member.
18 It asks for Canon Law. Generalized and diffuse concern for church autonomy, without more, does
19 not exempt a church from the operation of law. Churches are not free from all secular obligations.
20 The government's interest in protecting children from sexual misconduct is strong. There is no
21 doctrinal nor protected-choice based rationale for the objection to disclosure of Canon Law. (*Bollard*
22 *v. California Province, supra*, 196 F.3d at 948) This inquiry does not require an evaluation of religious
23 doctrine or religious practices.

24 //
25 //
26 //

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Interrogatory 15

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. The mere fact that the interrogatory calls for a conclusion is not a valid objection. (Code Civ. Proc. § 2017, subd. (a)) The interrogatory must be answered regarding priests and bishops.

Interrogatory 16

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. The First Amendment does not, in all cases, prevent inquiry into the work structure of a church or religious organization. (See *Bollard v. California Province*, *supra*, 196 F.3d at 950) This is not an inquiry into religious doctrine or an evaluation of the reasonableness of church procedure. It is merely a request for a generalized explanation of the procedure.

PLAINTIFF RACHEL LOMAS' SPECIAL INTERROGATORIES, SET ONE,
PROPOUNDED UPON FATHER JOSEPH ILLO

Interrogatory 4

The motion to compel is **GRANTED IN PART AND DENIED IN PART**. A full and complete response must be provided. The claim that facts are irrelevant to the subject matter is an insufficient ground for objection. (Code Civ. Proc. § 2017, subd. (a)) The court, however, will not require production of the home addresses and phone numbers of staff members as overly intrusive. The intrusiveness outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017, subd. (c)) Work addresses and phone numbers must be disclosed.

//
//

1 Interrogatory 6

2 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
3 to this interrogatory. The words "concerns/complaints" are stricken from the interrogatory because
4 these words cause an ambiguity. (See *Cembrook v. Superior Court* (1961) 56 Cal. 2d 423, 430) Work
5 addresses and phone numbers must be provided.

6
7 Interrogatory 7

8 The motion to compel is **GRANTED IN PART AND DENIED IN PART**. A full and
9 complete response must be provided. The inquiry is limited to defendants and does not include
10 documents exchanged between defendants and their counsel of record pursuant to the common
11 interest doctrine. (See *Oxy v. Superior Court, supra*, 115 Cal.App.4th at 890-891)

12
13 Interrogatory 10

14 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
15 to this interrogatory. Documents must be described with sufficient detail to permit the propounding
16 party to locate and to identify. (Code Civ. Proc. § 2030, subd. (f)(2))

17
18 Interrogatory 12

19 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
20 to this interrogatory. See Interrogatory 4, *supra*. Home addresses must be provided if work addresses
21 are unknown. (*City of Long Beach v. Superior Court* (1975) 64 Cal.App.3d 65, 80)

22
23 Interrogatory 14

24 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
25 to this interrogatory. See Special Interrogatories, Interrogatory 9, propounded to Diocese.

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1 Interrogatory 19

2 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
3 to this interrogatory. See Interrogatory 10, *supra*.

4
5
6 PLAINTIFF RACHEL LOMAS' REQUESTS FOR ADMISSIONS, SET ONE,
7 PROPOUNDED UPON THE DIOCESE OF STOCKTON

8 Request 10

9 The motion to compel is **GRANTED**. Defendant has failed to provide the protected zone
10 of privacy infringed. (See *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1018-1019) Notice is
11 directly relevant to issues in this action. (See *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d
12 516,525)

13
14 Request 11

15 The motion to compel is **DENIED**. The request is ambiguous and overbroad. (*Cembrook*,
16 *supra*)

17
18 Request 12

19 The motion to compel is **DENIED**. Although overbreadth and argumentative are not valid
20 objections, the request is impermissibly compound. (Code Civ. Proc. § 2033, subd. (c)(5))

21
22 Request 13 (First)

23 The motion to compel is **DENIED**. The request is ambiguous and overbroad. (*Cembrook*,
24 *supra*) The request is impermissibly compound. (Code Civ. Proc. § 2033, subd. (c)(5))

25 //

26 //

1 Requests 15 through 21

2 The motion to compel is **DENIED**. The request is impermissibly compound. (Code Civ.
3 Proc. § 2033, subd. (c)(5))

4
5 Request 25

6 The motion to compel is **DENIED**. The request is impermissibly compound. (Code Civ.
7 Proc. § 2033, subd. (c)(5)) Defendant is asked to admit that Defendant, Fr. Illo, made "alleged"
8 defamatory remarks to Jose Munoz and that Defendant, Fr. Illo, was not disciplined for those
9 remarks, if true. Relevance to the subject matter has not been established. One incident does not
10 establish a common pattern or practice. (See Code Civ. Proc. § 2017)

11
12
13 **PLAINTIFF KATHLEEN MACHADO'S REQUESTS FOR ADMISSIONS, SET
14 ONE, PROPOUNDED UPON BISHOP STEVEN BLAIRE**

15 Request 1

16 The motion to compel is **DENIED**. The request is impermissibly compound and not
17 relevant to the subject matter of the litigation. (Code Civ. Proc. §§ 2017, 2033, subd. (c)(5))

18
19 Requests 6 through 16

20 The motion to compel is **DENIED**. The request is impermissibly compound. (Code Civ.
21 Proc. § 2033, subd. (c)(5))

22
23 Request 25

24 The motion to compel is **DENIED**. The request is impermissibly compound and not
25 relevant to the subject matter of the litigation. (Code Civ. Proc. §§ 2017, 2033, subd. (c)(5))

26 //

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

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IT IS FURTHER ORDERED that plaintiffs' request for sanctions is denied. The Court finds that all parties acted with substantial justification, making imposition of sanctions unjust.

Dated: OCT 06 2004

ELIZABETH HUMPHREYS

Judge of the Superior Court

Approved as to form:

Dated: _____

Attorney for defendants Ilo, Ryan, Blaire, and Diocese

Dated: _____

Attorney for defendant Arakal

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

1 George J. MacKoul, No. 170586
Sabbah and MacKoul
2 Attorneys and Counselors at Law
49 Locust Street
3 Falmouth, Massachusetts 02540
4 508-495-4955

5 Anthony Boskovich, No. 121198
Law Offices of Anthony Boskovich
6 28 N. First Street, 6th Floor
San Jose, California 95113-1210
7
8 408-286-5150

9 Attorneys for Plaintiffs

10
11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**
13

14 KATHLEEN MACHADO, individually and)
in her capacity as Guardian ad Litem for)
15 RACHEL LOMAS and AMBER LOMAS,)
Plaintiffs,)
16 v.)
17 FATHER JOSEPH ILLO; FATHER FRANCIS)
JOSEPH a.k.a. FATHER FRANCIS ARAKAL;)
18 FATHER RICHARD RYAN; BISHOP STEVEN)
BLAIRE; THE DIOCESE OF STOCKTON;)
19 DOES 1 through 100,)
Defendants.)
20

No. CV 018440
PROOF OF SERVICE

21 I am employed in the County of Santa Clara, State of California.

22 I am over the age of 18 and not a party to the within action; my business address is 28 North
23 First Street, Sixth Floor, San Jose, CA 95113-1210.

24 On October 18, 2004, I caused to be served the foregoing NOTICE OF ENTRY OF
25 ORDER on the parties involved in said cause by placing by placing a true and correct copy of the
26 document(s) listed above enclosed in a sealed envelope(s) with postage thereon fully prepaid in the
27 United States Mail at San Jose, California addressed as follows:
28

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

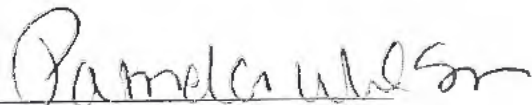
1 Paul Balestracci
Neumiller & Beardslee
2 P.O. Box 20
Stockton, CA 95201-3020
3 Phone: (209)948-8200
Fax: (209)948-4910

4 Michael Coughlan
5 Coughlan & O'Rourke, LLP
3031 W. March Lane, Suite 210 West
6 Stockton, CA 95129
Phone: (209)952-3878



7 George J. MacKoul
8 Sabbah and MacKoul
Attorneys and Counselors at Law
9 49 Locust Street
Falmouth, Massachusetts 02540

11 Executed on 18 October 2004, at San Jose, California.

12 I declare under penalty of perjury in accordance with the laws of the State of California that
13 the foregoing is true and correct.

14 
15 PAMELA WILSON
16
17
18
19
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27
28

1 George J. MacKoul, No. 170586
Sabbah and MacKoul
2 Attorneys and Counselors at Law
49 Locust Street
3 Falmouth, Massachusetts 02540
4 508-495-4955
5 Anthony Boskovich, No. 121198
Law Offices of Anthony Boskovich
6 28 N. First Street, 6th Floor
San Jose, California 95113-1210
7
8 408-286-5150
9 Attorneys for Plaintiffs

Filed  OCT 06 2004
ROSA JUNG
By  DEPUTY

Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

11 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF SAN JOAQUIN**

14 KATHLEEN MACHADO, individually and
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15 RACHEL LOMAS and AMBER LOMAS,
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18 FATHER RICHARD RYAN; BISHOP STEVEN
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No. CV 018440

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DEFENDANTS ILLO, BLAIRE,
AND DIOCESE OF STOCKTON

23 The above-entitled matter came on for hearing on 3 March 2004 before the Honorable
24 Elizabeth Humphreys, judge presiding. Plaintiffs and moving parties appeared through their counsel
25 George MacKoul and Anthony Boskovich. Defendants Illo, Ryan Blaire, and the Diocese of

28 Order on Plaintiff's Motion to Compel re
defendants Illo, Blaire, and Diocese of Stockton

SEP 21 2004

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1 Stockton appeared through their counsel Paul Balestracci. Defendants Arakal appeared through his
2 counsel, Michael Coughlan.

3 Having reviewed the moving papers and evidence, and upon hearing the argument of
4 counsel,

5
6 **IT IS ORDERED** that plaintiffs' motions to compel as enumerated below are **GRANTED**
7 **IN PART and DENIED IN PART** as follows:

8
9 **PLAINTIFF RACHEL LOMAS' REQUEST FOR**
10 **PRODUCTION OF DOCUMENTS, SET ONE, PROPOUNDED**
11 **UPON THE ROMAN CATHOLIC BISHOP OF STOCKTON**

12 Request 1

13 Plaintiff's motion to compel further responses and production of documents is **DENIED**.
14 This request demands reports regarding past reports of sexual abuse to minors. The foreseeable
15 event must characteristic of the activities of the enterprise. While sexual abuse in the Roman
16 Catholic Church has received substantial publicity since 1986 when *Rita M. v. Roman Catholic Church*
17 (1986) 187 Cal. App. 3d 1453, 1461 was decided, this behavior/activity is not characteristic of the
18 Church's enterprise.

19 Request 4

20 Assuming that this request is for Father Illo's personnel file, plaintiffs' motion is **GRANTED**.
21 Defendant must turn over the personnel file as it relates to internal investigations as they relate to
22 Penal Code section 11166 and Father Joseph and claims relating to defamation by Father Illo. (See
23 *Conley v. Roman Catholic Archbishop* (2000) 85 Cal. App. 4th 1126, 1132-33; See Plaintiff's Reply in
24 Support of Motion regarding First Amendment regarding Fr. Joseph)

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26 //

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Request 6

This request asks for documents regarding any complaints of misconduct made against Father Illo for the past ten years. Plaintiffs' motion is **GRANTED**. Defendant must produce all documents in its possession responsive to this request, *regarding Penal Code § 11166 and relating to defamation.*

Request 7

This request is for documents regarding communications among the defendants. The motion is **DENIED**. The documents are protected by the common interest doctrine. (See *Oxy v. Superior Court* (2004) 115 Cal.App.4th 874, 890-91. In any event, defendants indicated that all documents would be voluntarily produced.

Requests 8 through 14

These requests demand documents regarding what might be broadly categorized as "witness statements". Plaintiffs' motion to compel production is **GRANTED**. Defendant must produce all documents in its possession responsive to these requests. Defendants have not cited a specific legal exception to discovery based on a "canonical investigation". Given the three factors to be weighed in *Bollard v. California Province* (9th Cir. 1999) 196 F. 3d 940, 946-48, Defendant must produce the statements and may redact therefrom any statements regarding competing interpretations of church doctrine and/or practice. The defendant may also redact any statements articulating a religious justification for the church's personnel decisions. All redacted documents must clearly show where redactions were made.

Requests 17 through 19 and 21

These are requests for documents supporting responses to interrogatories. Plaintiffs' motion to compel is **GRANTED**. Documents must be produced except as set forth regarding Requests 8-

1 14. Any documents being withheld must be identified per Code of Civil Procedure section 2031,
2 subdivision (g)(3).

3

4 Request 28

5 This request is for documents regarding Form Interrogatory 15.1. The motion to compel
6 is **GRANTED**. Defendant must answer the Request in accordance with the procedure established
7 in Code of Civil Procedure section §2031, subdivision (g).

8

9 Request 29

10 This request asks for documents regarding communications with Sister Barbara. Plaintiff's
11 motion is **GRANTED**. Documents must be produced except as set forth regarding Requests 8-14.
12 Any documents being withheld must be identified per Code of Civil Procedure section 2031,
13 subdivision (g)(3).

14

15 Request 30

16 This request is for Father Arakal's telephone records. The motion as to this request is
17 **DENIED**. (See Cal. Const., art. I, § 1)

18

19

20 PLAINTIFF RACHEL LOMAS' FORM INTERROGATORIES, SET ONE,
21 PROPOUNDED UPON THE ROMAN CATHOLIC BISHOP OF STOCKTON

22

22 Interrogatory 4.2

23 The motion to compel is **GRANTED**. This interrogatory must be fully and completely
24 answered.

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Interrogatory 12.1

The motion to compel is **GRANTED**. The interrogatory must be rephrased by plaintiff to remove the ambiguity, and defendant must respond fully and completely..

Interrogatory 12.2

The motion to compel is **GRANTED**. The names, addresses, telephone numbers and occupations of persons who are potential witnesses are discoverable. (See generally, *Felloes v. Superior Court* (1980) 108 Cal. 3d 55, 69) Plaintiff may not, however, compel disclosure of every individual interviewed on behalf of the defendants, when the response would reveal persons the defendants' attorney considered to be important enough to interview. (*Nacht v. Superior Court* (1996) 47 Cal. 4th 214, 217-218)

Interrogatories 12.3, 12.6, and 15.1

The motion to compel is **GRANTED**. Defendant has indicated that it will fully and completely respond to these interrogatories.

Interrogatory 17.1(d)

The motion to compel is **GRANTED**. Defendant is ordered to provide a full and complete response to this interrogatory. Defendant may produce documents instead of identifying them, pursuant to Code of Civil Procedure section 2030, subdivision (f)(2).

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1 PLAINTIFF RACHEL LOMAS' SPECIAL
2 INTERROGATORIES, SET ONE, PROPOUNDED UPON THE
3 DIOCESE OF STOCKTON

4 Interrogatory 7

5 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
6 to this interrogatory. An interrogatory must be answered if "the nature of the information sought
7 is apparent". (*Deyo v. Kilbourne* (1976) 84 Cal. App. 3d 771, 783)

8
9 Interrogatory 8

10 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
11 to this interrogatory. An interrogatory must be answered if "the nature of the information sought
12 is apparent". (*Deyo v. Kilbourne* (1976) 84 Cal. App. 3d 771, 783)

13
14 Interrogatory 9

15 Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond
16 to this interrogatory. An objection based on opinion is not valid. (Code Civ. Proc. §2030, subd.(c)(6))
17 The interrogatory does not ask for communications between a priest and a community member.
18 It asks for Canon Law. Generalized and diffuse concern for church autonomy, without more, does
19 not exempt a church from the operation of law. Churches are not free from all secular obligations.
20 The government's interest in protecting children from sexual misconduct is strong. There is no
21 doctrinal nor protected-choice based rationale for the objection to disclosure of Canon Law. (*Bollard*
22 *v. California Province, supra*, 196 F.3d at 948) This inquiry does not require an evaluation of religious
23 doctrine or religious practices.

24 //

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28 Order on Plaintiff's Motion to Compel re
defendants Illo, Blaire, and Diocese of Stockton

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Interrogatory 15

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. The mere fact that the interrogatory calls for a conclusion is not a valid objection. (Code Civ. Proc. § 2017, subd. (a)) The interrogatory must be answered regarding priests and bishops.

Interrogatory 16

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. The First Amendment does not, in all cases, prevent inquiry into the work structure of a church or religious organization. (See *Bollard v. California Province*, *supra*, 196 F.3d at 950) This is not an inquiry into religious doctrine or an evaluation of the reasonableness of church procedure. It is merely a request for a generalized explanation of the procedure.

PLAINTIFF RACHEL LOMAS' SPECIAL INTERROGATORIES, SET ONE,
PROPOUNDED UPON FATHER JOSEPH ILLO

Interrogatory 4

The motion to compel is ~~**GRANTED IN PART AND DENIED IN PART**~~. A full and complete response must be provided. The claim that facts are irrelevant to the subject matter is an insufficient ground for objection. (Code Civ. Proc. § 2017, subd. (a)) The court, however, will not require production of the home addresses and phone numbers of staff members as overly intrusive. The intrusiveness outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. (Code Civ. Proc. § 2017, subd. (c)) Work addresses and phone numbers must be disclosed.

OK 2/15
[Handwritten signature]

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Interrogatory 6

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. The words "concerns/complaints" are stricken from the interrogatory because these words cause an ambiguity. (See *Cembrook v. Superior Court* (1961) 56 Cal. 2d 423, 430) Work addresses and phone numbers must be provided.

Interrogatory 7

The motion to compel is **GRANTED IN PART AND DENIED IN PART**. A full and complete response must be provided. The inquiry is limited to defendants and does not include documents exchanged between defendants and their counsel of record pursuant to the common interest doctrine. (See *Oxy v. Superior Court, supra*, 115 Cal.App.4th at 890-891)

Interrogatory 10

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. Documents must be described with sufficient detail to permit the propounding party to locate and to identify. (Code Civ. Proc. § 2030, subd. (f)(2))

Interrogatory 12

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. See Interrogatory 4, *supra*. Home addresses must be provided if work addresses are unknown. (*City of Long Beach v. Superior Court* (1976) 64 Cal.App.3d 65, 80)

Interrogatory 14

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. See Special Interrogatories, Interrogatory 9, propounded to Diocese.

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Interrogatory 19

Plaintiff's motion to compel is **GRANTED**. Defendant must fully and completely respond to this interrogatory. See Interrogatory 10, *supra*.

PLAINTIFF RACHEL LOMAS' REQUESTS FOR ADMISSIONS, SET ONE, PROPOUNDED UPON THE DIOCESE OF STOCKTON

Request 10

The motion to compel is **GRANTED**. Defendant has failed to provide the protected zone of privacy infringed. (See *Davis v. Superior Court* (1992) 7 Cal.App.4th 1008, 1018-1019) Notice is directly relevant to issues in this action. (See *Board of Trustees v. Superior Court* (1981) 119 Cal.App.3d 516,525)

Request 11

The motion to compel is **DENIED**. The request is ambiguous and overbroad. (*Cembrook, supra*)

Request 12

The motion to compel is **DENIED**. Although overbreadth and argumentative are not valid objections, the request is impermissibly compound. (Code Civ. Proc. § 2033, subd. (c)(5))

Request 13 (First)

The motion to compel is **DENIED**. The request is ambiguous and overbroad. (*Cembrook, supra*) The request is impermissibly compound. (Code Civ. Proc. § 2033, subd. (c)(5))

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Requests 15 through 21

The motion to compel is **DENIED**. The request is impermissibly compound. (Code Civ. Proc. § 2033, subd. (c)(5))

Request 25

The motion to compel is **DENIED**. The request is impermissibly compound. (Code Civ. Proc. § 2033, subd. (c)(5)) Defendant is asked to admit that Defendant, Fr. Illo, made “alleged” defamatory remarks to Jose Munoz and that Defendant, Fr. Illo, was not disciplined for those remarks, if true. Relevance to the subject matter has not been established. One incident does not establish a common pattern or practice. (See Code Civ. Proc. § 2017)

PLAINTIFF KATHLEEN MACHADO’S REQUESTS FOR ADMISSIONS, SET ONE, PROPOUNDED UPON BISHOP STEVEN BLAIRE

Request 1

The motion to compel is **DENIED**. The request is impermissibly compound and not relevant to the subject matter of the litigation. (Code Civ. Proc. §§ 2017, 2033, subd. (c)(5))

Requests 6 through 16

The motion to compel is **DENIED**. The request is impermissibly compound. (Code Civ. Proc. § 2033, subd. (c)(5))

Request 25

The motion to compel is **DENIED**. The request is impermissibly compound and not relevant to the subject matter of the litigation. (Code Civ. Proc. §§ 2017, 2033, subd. (c)(5))

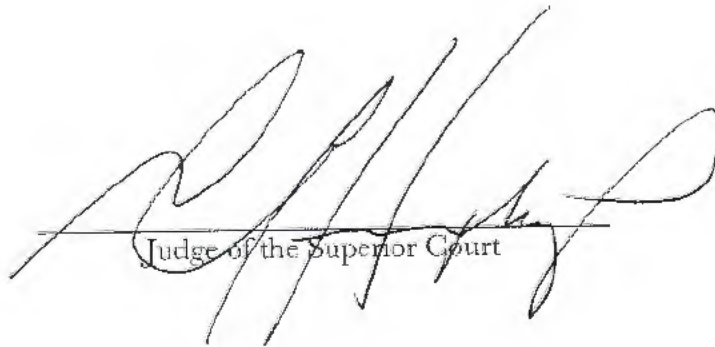
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IT IS FURTHER ORDERED that plaintiffs' request for sanctions is denied. The Court finds that all parties acted with substantial justification, making imposition of sanctions unjust.

Dated: 10/6/04



Judge of the Superior Court

Approved as to form:

Dated: _____

Attorney for defendants Illo, Ryan, Blaire, and Diocese

Dated: _____

Attorney for defendant Arakal

Filed JUL 30 2004

ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

Plaintiff: KATHLEEN MACHADO, et al

vs.

CASE NO. CV018440

Defendant: FR. JOSEPH ILLO, et al

Certificate of Service by Mail

I, the undersigned, declare that I am a Deputy Superior Court Clerk of the County of San Joaquin, State of California, and not a party to the action, and that on JUL 30 2004, I deposited in the United States Post Office at Stockton, California, true and correct copies of **Notice of Decision**, copies of which are hereto attached and made a part hereof, one copy of which being addressed to each of the following named persons at the following names and addresses:

George J. MacKoul
SABBAH & MACKOUL
49 Locust Street
Falmouth, MA 02540

Paul N. Balestracci
NEUMILLER & BEARDSLEE
P. O. Box 20
Stockton, CA 95201-3020

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

Michael D. Coughlan
COUGHLAN & O'ROURKE LLP
3031 West March Lane, Suite 210 West
Stockton, CA 95203

Additional address attached

I further declare that each of said copies so mailed and addressed was enclosed in a separate envelope, sealed, with the postage thereon fully paid.

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

Executed at Stockton on the above date

Charlene Gray
Charlene Gray
Deputy Superior Court Clerk

CERTIFICATE OF SERVICE BY MAIL

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Filed JUL 29 2004
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
STOCKTON BRANCH

KATHLEEN MACHADO, et al
Plaintiffs

Case No. CV018440

vs

NOTICE OF
DECISION

FR. JOSEPH ILLO, et al
Defendants

I

The above-entitled matter came on for hearing March 3, 2004 before the Honorable Elizabeth Humphreys. Attorneys George MacKoul and Anthony Boskovich appeared on behalf of the plaintiffs, Kathleen Machado as an individual and as Guardian ad Litem for Rachel Lomas and Amber Lomas. Attorney Michael Coughlan appeared on behalf of the defendant Fr. Francis Joseph aka Joseph Arakal. Attorney Paul Balestracci appeared on behalf of the defendants Fr. Joseph Illo, Monsignor Richard J. Ryan, Bishop Steve Blaire and The Roman Catholic Bishop of Stockton.

Having heard and considered the documentary evidence and arguments presented by counsel, the Court took the matter under submission. The matter was stayed as a result of the Petition for Coordination in case JCCP No. 4359. By stipulation of counsel the matter was re-activated and again deemed under submission on July 1, 2004. The Court now makes a decision on the matter taken under submission.

Document Production: Motion to Compel Further Responses.

Request 1: (All Reports in the Past Ten Years regarding Sexual Abuse to Minors)

Sustained. The foreseeable event must be characteristic of the activities of the enterprise. While sexual abuse in the Roman Catholic Church has received substantial publicity since 1986 when Rita M. was decided, this behavior/activity is not characteristic of the Church's enterprise. See *Rita M. V. Roman Catholic Church*, 187 Cal. App. 3d 1453, 1461 (1986).

Request 4: ("Personal" File of Fr. Illo)

[The Court is assuming that Plaintiff is requesting a personnel file.]

Overruled. Defendants must produce those portions of Fr. Illo's personnel file that relate to internal investigations relating to Penal Code § 11166 and Fr. Joseph. See *Conley v. Roman Catholic Archbishop*, 85 Cal. App. 4th 1126, 1132-33 (2000). See Plaintiff's Reply in Support of Motion regarding First Amendment regarding Fr. Joseph.

Request 6: (Complaints of Misconduct by Fr. Illo)

Overruled. See ruling regard Request 4.

Request 7:

Sustained. Common Interest Doctrine. See *Oxy v. Superior Court*, 115 Cal. App. 4th 874, 890-891 (2004). Defendant indicated all documents would be produced.

Requests 8-14: (Witness statements acquired by "canonical investigation".)

Overruled. Defendants have not cited a specific legal exception to discovery based on a "canonical investigation". Given the three factors to be weighed in *Bollard v. California Province*, [196 F. 3d 940, 946-48 (9th Cir. 1999)], Defendant must produce the statements and may redact therefrom any statements regarding competing interpretations of church doctrine and/or practice. The defendant may also redact any statements articulating a

1 religious justification for the Church's personnel decisions. All redacted
2 documents must clearly show where redactions were made.

3 Requests 17-19 and 21: (Request for Documents Supporting Interrogatory Answers.)

4 Overruled. Documents must be produced except as set forth regarding
5 Requests 8-14. Any documents being withheld must be identified per
6 CCP §2031(q)(3).

7 Request 28: (Request for Documents regarding Form Interrogatory 15.1.)

8 Overruled. Defendant must answer the Request in accordance with the
9 procedure established in CCP §2031(g).

10 Request 29: (Request for Documents regarding Communication with Sister Barbara.)

11 Overruled. Documents must be produced except as set forth regarding
12 Requests 8-14. Any documents being withheld must be identified per
13 CCP §2031 (g)(3).

14 Request 30: (Request for Telephone Documents regarding Fr. Arakal / May-Dec., 2001.)

15 Sustained. Cal. Const. Art. I §1.

16 III

17 Form Interrogatories: Motion to Compel Further Response

18 Interrogatory 4.2: (Insurance)

19 Overruled. Interrogatory must be answered. CCP§2030. See *Deyo v.*
20 *Kilbourne*, 84 Cal. App. 3d 771, 783-84 (1978).

21 Interrogatory 12.1: (Identity of Witnesses)

22 Overruled, however, the interrogatory must be rephrased by Plaintiff to
23 remove the ambiguity. See *Cembrook v. Sup. Ct.*, 56 Cal. 2d. 423, 430
24 (1961).

25 Interrogatory 12.2: (Interviewing Witnesses)

26 Overruled. The names, addresses, telephone numbers and occupations of
27 persons who are potential witnesses are discoverable. See generally, *Fellows*
28 *v. Sup. Ct.*, 108 Cal. 3d 55, 69 (1980). Plaintiff may not, however, compel

1 disclosure of every individual interviewed on behalf of the defendants, when
2 the response would reveal persons the defendants' attorney considered to be
3 important enough to interview. *Nacht v. Sup. Ct.*, 47 Cal. 4th 214, 217-218
4 (1996).

5 Interrogatory 12.3: Not at issue. Defendant will respond.

6 Interrogatory 12.6: Not at issue. Defendant will respond.

7 Interrogatory 15.1: (Affirmative Defenses) Not at issue. Defendant will respond.

8 Interrogatory 17.1(d): (List of Documents regarding Admissions)

9 Overruled. Defendant may produce documents instead of identifying
10 pursuant to CCP §2030 (f)(2).

11 IV

12 Special Interrogatories: Motion to Compel Further Responses propounded to
13 Diocese of Stockton.

14 Interrogatory 7:

15 Overruled. An interrogatory must be answered if "the nature of the
16 information sought is apparent". *Deyo v. Kilbourne*, 84 Cal. App. 3d 771,
17 783 (1978).

18 Interrogatory 8:(

19 Overruled. See interrogatory 7 above.

20 Interrogatory 9:

21 Overruled. Objection based on opinion is not valid. CCP §2030 (c)(6). The
22 interrogatory does not ask for communications between a priest and a
23 community member. It asks for Canon Law. Generalized and diffuse
24 concern for church autonomy, without more, does not exempt a church from
25 the operation of law. Churches are not free from all secular obligations. The
26 government's interest in protecting children from sexual misconduct is strong.
27 There is no doctrinal nor protected-choice based rationale for the objection to
28 disclosure of Canon Law. *Bollard v. California*, supra, 196 F.3d at 948. This

inquiry does not require an evaluation of religious doctrine or religious practices.

Interrogatory 15: (Right to hire and fire priests and bishops)

Overruled. The mere fact that the interrogatory calls for a conclusion is not a valid objection. CCP §2017(a). The interrogatory must be answered regarding priests and bishops.

Interrogatory 16: (Unless “yes” to hire and fire explain)

Overruled. The First Amendment does not, in all cases, prevent inquiry into the work structure of a church or religious organization. See *Ballard v. California*, supra, 196 F.3d at 950. This is not an inquiry into religious doctrine or an evaluation of the reasonableness of church procedure. It is merely a request for a generalized explanation of the procedure.

V

Special Interrogatories: Motion to Compel Further Response

Propounded to Fr. Illo.

Interrogatory 4: (Name, address, phone of staff at church September 11, 2001)

Overruled in part. Sustained in part. The claim that facts are irrelevant to the subject matter is an insufficient ground for objection. CCP 2017(a). The court, however, will not require production of the home addresses and phone numbers of staff members as overly intrusive. The intrusiveness outweighs the likelihood that the information sought will lead to the discovery of admissible evidence. CCP §2017 (c). Work addresses and phone numbers must be disclosed.

Interrogatory 6: (Name, phone, address of witness who spoke to Plaintiff September 11, 2001)

Sustained. The words “concerns/complaints” are stricken from the interrogatory because these words cause an ambiguity. See *Cembrock v. Sup. Ct.*, supra., 56 Cal. 2d at 430. Work addresses and phone numbers must be provided.

1 Interrogatory 7: (Description of documents exchanged between defendants)

2 Overruled in part. Sustained in part. The inquiry is limited to defendants and
3 does not include documents exchanged between defendants and their counsel
4 of record pursuant to the common interest doctrine. See *Oxy v. Sup. Ct.*,
5 supra, 115 Cal. App. 4th at 890-891.

6 Interrogatory 10: (All church documents regarding protection of minors)

7 Overruled. Documents must be described with sufficient detail to permit the
8 propounding party to locate and to identify. CCP §2030(f)(2).

9 Interrogatory 12: (Name, address phone for current employees at church)

10 Overruled. See Interrogatory 4, supra. Home addresses must be provided if
11 work addresses are unknown. *City of Long Beach v. Sup. Ct.*, 64 Cal. App.
12 3d 65, 80 (1976).

13 Interrogatory 14: (Special Canon law regarding confidential communications)

14 Overruled. See Form Interrogatories, Interrogatory 9 propounded to Diocese.

15 Interrogatory 19: (Identify Documents with church policy and procedure regarding sex
16 between priests and minors)

17 Overruled. See Interrogatory 10, supra.

18 VI

19 Request for Admissions: Motion to Compel Further Answers from
20 Diocese of Stockton.

21 Request 10: (Notice of claims January 2002)

22 Overruled. Defendant has failed to provide the protected zone of privacy
23 infringed. See *Davis v. Superior Court*, 7 Cal. App. 4th 1008, 1018-1019
24 (1992). Notice is directly relevant to issues in this action. See *Bd. of Trustees*
25 *v. Sup. Ct.*, 119 Cal. App. 3d 516, 525 (1981).

26 Request 11: (Admit duty to report)

27 Sustained. Ambiguous. See *Cembrook v. Sup. Ct.*, supra., 56 Cal. 2d 430.
28 Breadth imposes undue burden ("any allegations of misconduct")

- 1 CCP § 2017 (a).
- 2 Request 12: (Affirmative Defenses- statute of limitations)
- 3 Sustained. Overbroad is not a valid objection. CCP §2117(a).
- 4 Argumentative and intended to harass are not valid objections. The
- 5 admission is compound in violation of CCP §2033 (c)(5).
- 6 Request 13: (First) (Affirmative Defense - comparative fault(?))
- 7 Sustained. Ambiguous. No intelligent reply may be given. *Cembrook v. Sup.*
- 8 *Ct.*, supra. 56 Cal. 2d 430. Compound. See Request 12., supra.
- 9 Request 13: (Secoud) (Affirmative Defense -3rd)
- 10 Sustained. Compound. See Request 12, supra.
- 11 Request 14: (Affirmative Defense - 4th)
- 12 Sustained. Ambiguous. Compound. See Request 13 (first) supra.
- 13 Request 15: (Affirmative Defense - 5th)
- 14 Sustained. Compound. See Request 12, supra.
- 15 Request 16: (Affirmative Defense - 5th)
- 16 Sustained. Compound. See Request 12, supra.
- 17 Request 17: (Affirmative Defense - 7th)
- 18 Sustained. Compound. See Request 12, supra.
- 19 Request 18: (Affirmative Defense - 7th)
- 20 Sustained. Compound. See Request 12, supra.
- 21 Request 19: (Affirmative Defense - 8th)
- 22 Sustained. Compound. See Request 12, supra.
- 23 Request 20: (Affirmative Defense - 8th)
- 24 Sustained. Compound. See Request 12, supra.
- 25 Request 21: (Affirmative - 9th)
- 26 Sustained. Compound. See Request 12, supra.
- 27 Request 25: (Discipline of Illo for Defamation)
- 28 Sustained. Compound. Defendant is asked to admit that Defendant, Fr. Illo,

made “alleged” defamatory remarks to Jose Munoz and that Defendant, Fr. Illo, was not disciplined for those remarks, if true. Relevance to the subject matter has not been established. One incident does not establish a common pattern or practice. See Cal. Civ. Pro. § 2017.

VII

Request for Admissions: Motion to Compel Further Answers from Defendant, Blaire

Request 1: (Illo suspension, discipline, psychological evaluation)

Sustained. Compound. Not relevant to subject matter. CCP §2033 (c)(5);
2017.

Request 2: (Illo suspension, discipline, psychological evaluation)

Sustained. See Request 1, supra.

Request 6: (Affirmative Defense - statute of limitations)

Sustained. Compound. CCP §2033 (c)(5).

Request 7: (Affirmative Defense - 2nd)

Sustained. Compound. CCP §2033 (c)(5).

Request 8: (Affirmative Defense - 3rd)

Sustained. Compound. CCP §2033 (c)(5).

Request 9: (Affirmative Defense - 4th)

Sustained. Compound. CCP §2033 (c)(5).

Request 10: (Affirmative Defense - 5th)

Sustained. Compound. CCP §2033 (c)(5).

Request 11: (Affirmative Defense - 5th)

Sustained. Compound. CCP§2033 (c)(5).

Request 12: (Affirmative Defense - 7th)

Sustained. Compound. CCP §2033 (c)(5).

Request 13: (Affirmative Defense - 7th)

Sustained. Compound. CCP §2033 (c)(5).

1 Request 14: (Affirmative Defense - 8th)

2 Sustained. Compound. CCP §2033 (c)(5).

3 Request 15: (Affirmative Defense - 8th)

4 Sustained. Compound. CCP §2033 (c)(5).

5 Request 16: (Affirmative Defense - 9th)

6 Sustained. Compound. CCP §2033 (c)(5).

7 Request 25: (Illo "suspension" and/or "discipline")

8 Sustained. Compound. Not relevant to subject matter. CCP §2033 (c)(5);

9 see Request 1.

10 Plaintiff to prepare Order pursuant to Rule of Court 391. No sanctions are granted.

11 The court finds that all parties acted with substantial justification making imposition of a
12 sanction unjust.

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Date: 7/29/04

17

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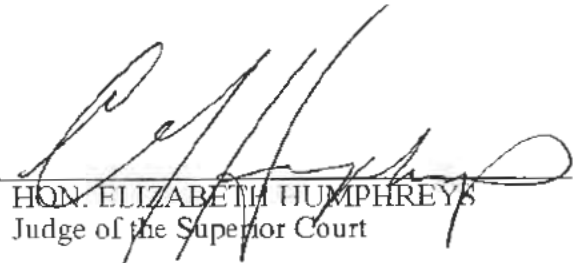
25

26

27

28

EH/cg


HON. ELIZABETH HUMPHREYS
Judge of the Superior Court

KATHLEEN MACHADO ET AL

Plaintiff(s),

VS

FR. JOSEPH ILLO ET AL

Defendant(s).

Filed: JUL 6 2004

ROSA JUNQUEIRO
CLERK

By: *[Signature]* DEPUTY

NOTICE OF HEARING

Case Number:

CV018440

Hearing Date: February 07, 2005 Time: 02:00 PM Department or Room: 41

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

To: Each Party
or
To: The Attorneys of Record

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

ROSA JUNQUEIRO, Court Administrator

CERTIFICATE OF MAILING

I declare under penalty of perjury, I am not a party to the within action and hereby certify: That I served the foregoing by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid in the United States Mail at Stockton California on JUL 6 2004, addressed as follows:

Signature

GEORGE J MACKOUL
SABBAH MACKOUL
49 LOCUST ST
FALMOUTH MA 02640

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

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

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

KATHLEEN MACHADO ET AL

Plaintiff(s),

VS

FR. JOSEPH ILLO ET AL

Defendant(s).

Filed: JUL 6 2004

**ROSA JUNQUEIRO
CLERK**

By: 
DEPUTY

NOTICE OF HEARING

Case Number:

CV018440

Hearing Date:	Time:	Department or Room:
February 22, 2005	01:30 PM	41

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

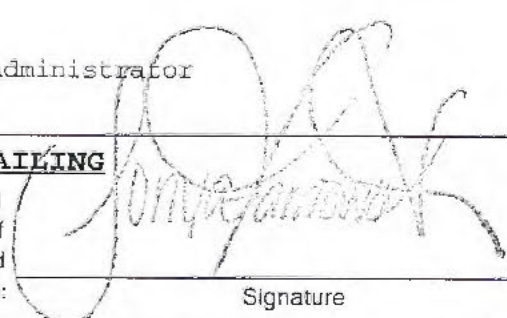
To: Each Party
or
To: The Attorneys of Record

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

ROSA JUNQUEIRO, Court Administrator

CERTIFICATE OF MAILING

I declare under penalty of perjury, I am not a party to the within action and hereby certify: That I served the foregoing by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid in the United States Mail at Stockton California on JUL 6 2004, addressed as follows:


Signature

GEORGE J MACKOUL
SABBAH MACKOUL
49 LOCUST ST
PALMOUTH MA 02640

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

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

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

07/01/04 08:45 AM 41 met at Stockton, California

Hon. Elizabeth Humphreys

<p>CV018440 KATHLEEN MACHADO ET AL VS FR. JOSEPH ILLO ET AL</p>	<p>Clerk: Charlene Gray Reporter/Tape: _____ CA Bailiff: <u>G. Clark</u> Interpreter: _____</p>
<p><input type="checkbox"/> [PLTF] Kathleen Machado <input type="checkbox"/> [DEFT] Joseph Illo Fr. <input type="checkbox"/> [DEFT] Francis Joseph Fr. AKA Joseph Arakal <input type="checkbox"/> [DEFT] Richard Ryan Fr. <input type="checkbox"/> [DEFT] Bishop Steven Blaire <input type="checkbox"/> [DEFT] The Diocese of Stockton</p>	<p><i>critCall</i> <i>Paul Balestracci</i> Law offices of Anthony Boskovich <input checked="" type="checkbox"/> NEUMILLER & BEARDSLEE <input checked="" type="checkbox"/> <i>Michael Coughlan & O'rouke</i> <input checked="" type="checkbox"/> NEUMILLER & BEARDSLEE <input type="checkbox"/> NEUMILLER & BEARDSLEE <input type="checkbox"/> NEUMILLER & BEARDSLEE <input type="checkbox"/></p>

Matter is continued to _____ in Dept. _____ due to _____

Case Management Conference Settlement Conference Trial Setting

Dropped
 Uninsured motorist case--exempt from Fast Track

Nature of proceedings: Case management conference;

_____ Subsequent day hearing/trial held

In accordance with stipulation of parties, the Settlement Conference & Trials dates are re-instated & the Motion to Compel heard on 3-3-04 is re-activated & deemed again under submission.

Matter is ordered referred to judicial arbitration after _____ days.
 Discovery remain open 30 days before trial.

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

Estimated length of time for trial: _____

Case is set for trial on 2-22-05 @ 1:30pm in 41

Settlement conference set for 2-7-05 @ 2pm in 41

Settlement Conference held Settlement Conference NOT held

No settlement--trial to remain as set.

Case settled. Trial date _____ is vacated.

Trial date reset to _____

Issue an OSC re: _____

No Proof of Service No Case Management Statements

Failure to appear Other _____

Clerk's Office to send notice.

Arbitration Clerk Fast Track Clerk Counsel Other

✕

KATHLEEN MACHADO ET AL

Plaintiff(s),

VS

FR. JOSEPH ILLO ET AL

Defendant(s).

Filed: JUN 0 8 2004

**ROSA JUNQUEIRO
CLERK**

By: Pamela Edwards
DEPUTY

NOTICE OF HEARING

Hearing Date:	Time:	Department or Room:
July 01, 2004	08:45 AM	41

Case Number:

CV018440

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

To: Each Party
or
To: The Attorneys of Record

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

ROSA JUNQUEIRO, Court Administrator

CERTIFICATE OF MAILING

I declare under penalty of perjury, I am not a party to the within action and hereby certify: That I served the foregoing by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid in the United States Mail at Stockton California on JUN 0 8 2004, addressed as follows:

Pamela Edwards

Signature

GEORGE J MACKOUL
SABBAH MACKOUL
49 LOCUST ST
FALMOUTH MA 02640

ANTHONY BOSKOVICH
LAW OFFICES OF ANTHONY BOSKOVICH
28 N FIRST STREET
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SUITE 210 WEST
STOCKTON CA 95219

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

Kathleen Machado, et al

CASE # *CV018440*

vs.

Father Joseph Illo, et al

MINUTE ORDER

DATE JUN 7 2004

- Trial Settlement Conference ^{Case Management} Status Conference
 Trial Setting Conference Small Claims Appeal Other

Date & Time set: *July 1, 2004 @ 8:45 am #41*

Date & Time vacated: _____

Continued to: _____

Action Requested by: *Counsel*

Reason *Letter attached.*

- Counsel to confirm by letter with copy to all parties.
 Counsel to prepare stipulation & order.
 Counsel to prepare dismissal

NOTICE TO BE SENT BY SUPERIOR COURT. JUN 08 2004

By: *Charlene Gray*

Charlene Gray, Superior Courtroom Clerk

cc:



Paul N. Balestracci

509 WEST WEBER AVENUE
FIFTH FLOOR
STOCKTON, CA 95203

POST OFFICE BOX 20
STOCKTON, CA 95201-3020

(209) 948-8200
(209) 948-4910 FAX

FROM MODESTO:
(209) 577-8200
(209) 577-4910 FAX

June 3, 2004

The Honorable Elizabeth Humphreys
San Joaquin County Superior Court
222 E. Weber Avenue
Stockton, CA 95202

Re: Kathleen Machado, et al. v. Father Joseph Iilo, et al.
San Joaquin County Superior Court Case No. CV 018440

Dear Judge Humphreys:

As you know, several Northern California Dioceses have sought to coordinate actions arising from childhood sexual abuse. The above case is a matter regarding events in the year 2001 and 2002; hence, it is not one of the matters that has been revived by the 2002 Amendment to Code of Civil Procedure section 340.1. It was not part of the original petition for coordination.

Accordingly, many of the issues in this case are substantially different than those which will be dealt with in the coordinated proceeding.

I am aware that the matter has been in a hiatus since the Petition for Coordination was filed, as this case was potentially subject to being added to that action. Based upon my conversations with the other attorneys, it appears that coordination is not appropriate for this case. Accordingly, we would request that this matter be placed back on calendar and the court rule on the discovery motions argued in March.

All parties are amenable to the originally scheduled trial date of February 22, 2005 and Settlement Conference date of February 7, 2005. I would request that a case management conference be set in order to confirm the status of the case.

I apologize for any inconvenience to you, but after careful consideration of all counsel, it appears that proceeding in the San Joaquin Superior Court is the best course of action for all of the parties.



The Hon. Elizabeth Humphreys
June 3, 2004
Page 2

Thank you for your courtesy and cooperation.

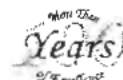
Very truly yours,



PAUL N. BALESTRACCI
Attorney-at-Law

PNB/km

cc: George Joseph MacKoul, Esq.
Michael D. Coughlan, Esq.
Anthony Boskovich, Esq.



APR 28 2004
ROSA M. LUNGUERO, CLERK
By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

Plaintiffs: KATHLEEN MACHADO, et al

vs.

CASE NO. CV018440

Defendants: FR. JOSEPH ILLO, et al

Certificate of Service by Mail

I, the undersigned, declare that I am a Deputy Superior Court Clerk of the County of San Joaquin, State of California, and not a party to the action, and that on **April 28, 2004** I deposited in the United States Post Office at Stockton, California, true and correct copies of **M. O. of 4-28-04**, a copy of which is hereto attached and made a part hereof, one copy of which being addressed to each of the following named persons at the following names and addresses:

George J. MacKoul
SABBAH AND MACKOUL
49 Locust Street
Falmouth, Mass 02540

Paul N. Balestracci
NEUMILLER & BEARDSLEE
Post Office Box 20
Stockton, CA 95201-3020

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

Michael D. Coughlan
COUGHLAN & O'ROURKE LLP
3031 West March Lane, Suite 210 West
Stockton, CA 95203

I further declare that each of said copies so mailed and addressed was enclosed in a separate envelope, sealed, with the postage thereon fully paid.

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

Executed at Stockton on the above date

Charlene Gray
Charlene Gray
Deputy Superior Court Clerk

CERTIFICATE OF SERVICE BY MAIL

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

DATE: April 28, 2004

KATHLEEN MACHADO, et al
Plaintiffs

vs.

FR. JOSEPH ILLO, et al
Defendants

JUDGE: Elizabeth Humphreys
CLERK: Charlene Gray
COURT REPORTER:
BAILIFF:

DEPT. 41
CASE NO. CV018440

The Court received the Statement of Decision RE: Petition for Coordination in case JCCP No. 4359. Based on that Decision, it is the Court's understanding that this action is stayed. Therefore, the Court will not issue rulings on the Motions to Compel taken under submission on March 3, 2004.

The dates set for the Settlement Conference (February 7, 2005) and the Trial (February 22, 2005) are vacated. DF

If any party believes the court's understanding is incorrect, that party is to contact the Department 41 clerk to set this matter for a Case Management Conference.

cc: Counsel

Minute Order

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STOCKTON

KATHLEEN MACHADO ET AL

Plaintiff(s),

VS

FR. JOSEPH ILLO ET AL

Defendant(s).

MAR 4 2004

Filed:

ROSA JUNQUEIRO
CLERK

By:

DEPUTY

NOTICE OF HEARING

Case Number:

Hearing Date:	Time:	Department or Room:
February 07, 2005	02:00 PM	41

CV018440

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

To: Each Party
or
To: The Attorneys of Record

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

ROSA JUNQUEIRO, Court Administrator

CERTIFICATE OF MAILING

I declare under penalty of perjury, I am not a party to the within action and hereby certify: That I served the foregoing by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid in the United States Mail at Stockton California on MAR 4 2004, addressed as follows:

Pamela Edwards

Signature

GEORGE J MACKOUL
SABBAH MACKOUL
49 LOCUST ST
FALMOUTH MA 02640

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

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

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF STOCKTON JOAQUIN

KATHLEEN MACHADO ET AL

Plaintiff(s),

VS

FR. JOSEPH ILLO ET AL

Defendant(s).

Filed: MAR 4 2004

ROSA JUNQUEIRO
CLERK

Pamela Edwards
By: _____
DEPUTY

NOTICE OF HEARING

Case Number:

CV018440

Hearing Date:	Time:	Department or Room:
February 22, 2005	01:30 PM	41

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

To: Each Party
or
To: The Attorneys of Record

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

ROSA JUNQUEIRO, Court Administrator

CERTIFICATE OF MAILING

I declare under penalty of perjury, I am not a party to the within action and hereby certify: That I served the foregoing by depositing true copies thereof enclosed in sealed envelopes with postage thereon fully prepaid in the United States Mail at Stockton California on MAR 4 2004 addressed as follows:

Pamela Edwards
Signature

GEORGE J MACKOUL
SABBAH MACKOUL
49 LOCUST ST
PALMOUTH MA 02640

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

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509 W WEBER AVENUE
STOCKTON CA 95201

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/03/04 09:00 AM 41 met at Stockton, California

Hon. Elizabeth Humphreys

Date Dept Judge

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

Clerk: Charlene Gray Reporter/Tape: Bailiff: A. Rossiter Interpreter:

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

George MacKaul Paul Balestracci Law offices of Anthony Boskovich NEUMILLER & BEARDSLEE michael Coughlan & O'rouke NEUMILLER & BEARDSLEE NEUMILLER & BEARDSLEE NEUMILLER & BEARDSLEE

[] Matter is continued to in Dept. due to

[] Case Management Conference [] Settlement Conference [] Trial Setting

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

Nature of proceedings: Trial setting conference;

[] Subsequent day hearing/trial held

If all counsel conclude that a Settlement Conference would be non-productive they may drop it.

[] Matter is ordered referred to judicial arbitration after days. [] Discovery remain open 30 days before trial.

[x] Case is to be tried as a [x] Jury Trial [] Court Trial.

[] Estimated length of time for trial:

[x] Case is set for trial on 2-22-05 @ 1:30pm in 41

[x] Settlement conference set for 2-7-05 @ 2pm in 41

[] Settlement Conference held [] Settlement Conference NOT held

[] No settlement--trial to remain as set.

[] Case settled. [] Trial date is vacated.

[] Trial date reset to

[] Issue an OSC re:

[] No Proof of Service [] No Case Management Statements

[] Failure to appear [] Other

Clerk's Office to send notice. MAR 4 2004

[] Arbitration Clerk [] Fast Track Clerk [] Counsel [] Other

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/03/04 09:00 AM 41 met at Stockton, California

Hon. Elizabeth Humphreys

Date	Dept		Judge
CV018440	KATHLEEN MACHADO ET AL VS FR. JOSEPH ILLO ET AL	Clerk: Charlene Gray Reporter/Tape: <u>CARRIE DALL</u> Bailiff: <u>A. Rossiter</u> Interpreter:	
<input type="checkbox"/> [PLTF] Kathleen Machado <input type="checkbox"/> [DEFT] Joseph Illo Fr. <input type="checkbox"/> [DEFT] Francis Joseph Fr. AKA Joseph Arakal <input type="checkbox"/> [DEFT] Richard Ryan Fr. <input type="checkbox"/> [DEFT] Bishop Steven Blaire <input type="checkbox"/> [DEFT] The Diocese of Stockton		George MacKaul, Law offices of Anthony Boskovich <input checked="" type="checkbox"/> Paul Balistracci NEUMILLER & BEARDSLEE <input checked="" type="checkbox"/> Michael Coughlan & O'Rourke <input checked="" type="checkbox"/> NEUMILLER & BEARDSLEE <input type="checkbox"/> NEUMILLER & BEARDSLEE <input type="checkbox"/> NEUMILLER & BEARDSLEE <input type="checkbox"/>	

Nature of proceedings: Notice of motion to compel proper responses to special interrogatories from Deft Fr. Joseph Illo; request for :

- Subsequent day hearing/trial held
- Matter is continued to _____ in Dept. _____ due to
- Dropped
- Plaintiff duly sworn and testified Defendant duly sworn and testified
- Witness sworn and testified _____
- Tentative Ruling Remains Set aside Matter argued and submitted Matter taken under submission
- MOTION GRANTED
 DENIED
- DEMURRER Sustained _____ Days to Amend
 Overruled _____ Days to Answer

- Grounds _____
- Points and authorities to be submitted by _____
- Response to be filed by _____ Reply to be filed by _____
- Judgment Debtor _____ sworn and retired with Counsel/Judgment Creditor
for examination. OEX Discharged
- Judgment Debtor failed to appear. Bench warrant to be issued for the arrest of _____
- Bail fixed in the amount of _____ Surrender can be any Court Day at 9:00 a.m., Dept. _____
 Judgment Debtor surrendered.
- Judgment Debtor has not shown good cause why he/she should not be held in contempt of Court.
- OSC Re: Contempt be issued as to debtor named above.
- OSC Re: Contempt is discharged as to debtor named above.
- Clerk's Office to send notice.
- Attorney _____ prepare order. Opposing counsel to approve as to form

PE

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

14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

20 vs.

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

) Case No.: CV018440
)
) **PLAINTIFF'S REPLY TO DEFENDANT**
) **BISHOP STEVEN BLAIRES'**
) **OPPOSITION TO PLAINTIFF'S**
) **MOTION TO COMPEL FURTHER**
) **RESPONSES TO REQUEST FOR**
) **ADMISSIONS SET NO 1.**
)
) **Date: March 3, 2004**
) **Time: 9:00 A.M.**
) **Dept. 41**
)
) **Honorable Elizabeth Humphreys**

26 **Response to Request for Admission No. 1: (Requesting An Admission That Fr. Illo Was**
27 **Not Suspended/Disciplined/Reassigned And/Or Psychologically Evaluated Because Of A**
28 **Prior Lawsuits For Defamation Against Fr. Illo).**

29 **Invasion of Privacy**

30 The compelling need for disclosure of this information is to prove pattern and practice
31 and thus ratification by Bishop Blaire of Fr. Illo's defamatory behavior. It is a critical element to

1 plaintiffs' being able to prove The Bishop's and the Diocese's respondent superior liability for
2 the defamatory acts of Fr. Illo. There is no other source from which to acquire this information.

3 This question is simply asking for a "yes" or "no" answer, the admission does not require
4 a detailed explanation of what type of action was taken.

5
6 **Religious Freedom**

7 Please see the separate brief filed herein, addressing the arguments made in Defendant's
8 opposition to this and other issues.

9
10 **Response to Request for Admission No. 2 ((Requesting An Admission that Fr. Illo was not**
11 **Suspended/Disciplined/Reassigned and/or Psychologically evaluated because of Fr. Illo's**
12 **Failure to Report the Sexual Abuse to Plaintiff Amber and Rachel Lomas to the**
13 **authorities).**

14 The defendants have credibility problem in fostering their "right to privacy" arguments in
15 regards to allegations of sexual abuse and the proper handling of those allegations. Ironically,
16 The Catholic Church by its own independent lay investigation, entitled "*The National Review*
17 *Board for the Protection of Children and Young People*¹" stated in section IV entitled
18 "Findings":

19
20 "Clericalism also contributed to a culture of secrecy. In many instances, Church leaders
21 valued confidentiality and a priest's right to privacy above the prevention of further harm
22 to victims and the vindication of their rights. Both **confidentiality and privacy** are
23 valuable, and obviously it is important to take steps to ensure, to the extent possible, the
24 privacy and rights of the accused. But these values **should not be allowed to trump the**
25 **duty to keep children safe from harm or to investigate claims** of sexual abuse against

1 This report was commissioned by the United States Conference of Catholic Bishops and consisted of lay individuals (lawyers, psychologist, judges) commissioned by the Bishops to study the Sexual Abuse Crisis in the U.S. Catholic Church. The report was made available to the public on February 27, 2004.

1 clerics and respond appropriately". *The National Review Board for the Protection of*
2 *Children and Young People* (February 27, 2004) Section IV B, 3c. (Emphasis added).

3 The compelling need to disclose the internal decisions making process of the Bishop has
4 been made evident by the defendants' own report!

5
6 **Response to Request for Admissions 6-16:**

7 Defendant argues in his opposition that the requests were "boilerplate", thus justifying
8 boilerplate responses. Nothing could be further from the truth. The request was intended to
9 extinguish boilerplate affirmative defenses filed by the defendant, which had no application in
10 logic or in fact to the allegations stated in plaintiff's complaint. Affirmative defenses such as
11 comparative fault, and assumption of the risk have no place in an answer in defense to
12 allegations of either for child molestation and/or defamation.

13 Again, "*The National Review Board for the Protection of Children and Young People*"
14 states:

15 "Many Church leaders tended to respond to allegations of sexual abuse of minors as a
16 legal problem rather than as a pastoral problem. As a result, they relied too heavily on the advice
17 of attorney's whose tactics often were inappropriate for the Church, and which tended to
18 compound the effects of the abuse that already had been inflicted. **These tactics included**
19 **raising inappropriate defenses that could be construed as blaming the victim, such as**
20 **assumption of the risk or contributory negligence, disclaiming responsibility** for their priest
by claiming they were independent contactors, and in general, adopting an **over adversarial**
approach". "*The National Review Board for the Protection of Children and Young People*"
(Supra) Section VI, B 6 section entitled "Reliance on Attorney's". (Emphasis added).²

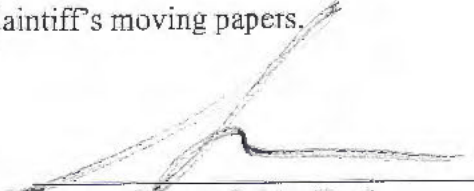
21
22 ²"Most fundamentally, some bishops in the United States did not appreciate the gravity of the problem of sexual
23 abuse of minors by clergy. Until recently, these bishops all too often treated victims of clerical sexual abuse as
24 adversaries and threats to the well-being of the Church, not as injured parishioners in need of healing. Far too
25 frequently, they treated predator priests as misdirected individuals in need of psychological treatment or a simple
change in environment, rather than as criminal offenders to be removed from ministry and reported to civil
authorities for possible prosecution and appropriate punishment. These approaches did not solve any problems but
rather served to exacerbate them". Supra at Page 92.

1 This over "adversarial approach" is specifically designed to force plaintiffs' counsels to
2 spend time and money in the discovery of these inappropriate defenses and ultimately file
3 motions to effect their compliance.
4

5
6 **CONCLUSION**

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

9
10 Dated: March 1, 2004


11 George J. MacKoul
12 Attorney for Plaintiffs
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PROOF OF SERVICE

COMMONWEALTH OF MASSACHUSETTS
BARNSTABLE COUNTY

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

On March 1, 2004, I served the within: **PLAINTIFF'S REPLY TO DEFENDANT DIOCESE OF STOCKTON'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO FORM INTERROGATORIES SET NO 1, PLAINTIFF'S REPLY TO DEFENDANT BISHOP STEVEN BLAIRES' OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR ADMISSIONS SET NO 1, PLAINTIFF'S REPLY TO DEFENDANT DIOCESE OF STOCKTON'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO REQUEST FOR PRODUCTION OF DOCUMENTS SET NO 1. PLAINTIFF'S REPLY TO DEFENDANT FR. JOSEPH ILLO'S OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL FURTHER RESPONSES TO SPECIAL INTERROGATORIES, SET NO 1.**

___ 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.

X by facsimile to the to the person(s) listed 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 26, 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

PE
D
BY Pamela Edwards

5 Anthony Boskovich
6 LAW OFFICES OF ANTHONY BOSKOVICH (Bar No. 121198)
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 Kathleen Machado as an individual and as
14 Guardian ad Litem for, Rachel Lomas and
15 Amber Lomas,
16 Plaintiffs,

17 vs.

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

) Case No.: CV018440

) **PLAINTIFF'S REPLY TO DEFENDANT**
) **DIOCESE OF STOCKTON'S**
) **OPPOSITION TO PLAINTIFF'S**
) **MOTION TO COMPEL FURTHER**
) **RESPONSES TO FORM**
) **INTERROGATORIES SET NO 1.**

) **Date: March 3, 2004**

) **Time: 9:00 A.M.**

) **Dept. 41**

) **Honorable Elizabeth Humphreys**

23 **FORM INTERROGATORY 4.2: (Requesting Specifics about Insurance Coverage)**

24 The opposition seeks to ridicule rather than to simply admit that defendant filed
25 incomplete response. Just because a copy of the insurance policy was given to plaintiffs does not
fully answer the question asked. (Which is why we have interrogatories **and** request for
production of documents). The policy on its face, does not disclose weather or not a reservation

1 of right exists between any of the defendants and the insurer. The policy itself does not disclose
2 potential or existing coverage dispute between the named defendants and their insurer (4.2 sub f).

3 Again, defendant now agrees to supplement the response, only **after** forcing this motion
4 to be filed. Had the defendant met and conferred on the issue and/or filed a supplemental
5 response, this issue would have been moot.

6
7 **Response to 12.1: (Identity of Witnesses to the Incident):**

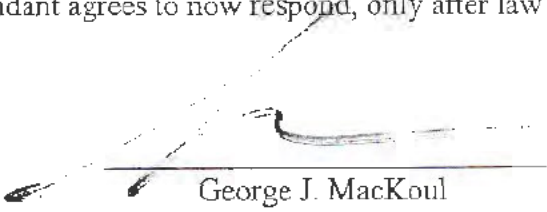
8 Defendant again cries "confusion" with regard to which "incident" the interrogatory is
9 directed. Defendant also wants to **now** clarify his interpretation of specific language contained in
10 the interrogatory. The time for that action has long passed. Plaintiff invited, explained and
11 clarified to defendant, over eight months ago in a meet and confer letter, all of these issues. Did
12 defendant follow up and meet and confer? **NO**. Did defendant even **attempt** to meet and confer
13 on responses to simple form interrogatory answers? **NO**. Further, defendant did not even write
14 plaintiff one single letter in an attempt to clarify these issues before law and motion was
15 initiated. Clearly the discovery process is being abused by defendant.

16
17 Plaintiff requests this court to order defendant to comply and answer the interrogatory
18 completely, without further objections as no other objections (other than ambiguity), were
19 asserted and are therefore waived.

1 Response to 12.3-15.1 :

2 See the prior response. Defendant agrees to now respond, only after law and motion was
3 initiated by plaintiff.

4 Dated: March 1, 2004

5 
6 _____
7 George J. MacKoul
8 Attorney for Plaintiffs
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PROOF OF SERVICE

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

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15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

16 Kathleen Machado as an individual and as
17 Guardian ad Litem for, Rachel Lomas and
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21 Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr.
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) **MOTION TO COMPEL FURTHER**
) **RESPONSES TO REQUEST FOR**
) **PRODUCTION OF DOCUMENTS SET**
) **NO 1.**

) **Date: March 3, 2004**

) **Time: 9:00 A.M.**

) **Dept. 41**

) **Honorable Elizabeth Humphreys**

26 **Request for Production No. 1 (All Reports In The Past Ten Years Re: Sexual Abuse To**
27 **Minors):**

28 **Respondent Superior**

29 The majority of plaintiff's reply will be made at oral argument. Suffice to say the only
30 evidence of notice lies within the defendant's records, which they claim are privileged from
31 discovery for other reason. The case law cited makes an exception with regard to finding

1 culpability of a priest's sexual misconduct if plaintiff's can prove ratification through prior
2 notice. See, *Rita M v. Roman Catholic Archbishop of Los Angeles* (1986) 187 Cal App. 3d 1453
3 at 1461, where the court stated that the appellants had not pointed out any facts which would
4 prove ratification.

5 Suffice to say, ratification can be proven, at a minimum, institutionally by the Catholic
6 Church's own study of the issue. In the recently released study: "The National Review Board for
7 the Protection of Children and Young", commissioned by the United States Conference of
8 Catholic Bishops, the study concluded:

9
10 Nevertheless, the number of incidents of sexual abuse of minors by Catholic clergy, at
11 least over the past fifty years, is significant and disturbing. This is a failing not simply on
12 the part of the priests who sexually abused minors but also on the part of those **bishops**
13 and other Church leaders **who did not act effectively to preclude** that abuse in the first
14 instance or respond appropriately when it occurred. These leadership failings have been
15 shameful to the Church as both a central institution in the lives of the faithful and a moral
16 force in the secular world, and have aggravated the harm suffered by victims and their
17 families. The bishops themselves recognized in the Charter that both the abuse itself and
18 the response of some of the bishops to that abuse "caused enormous pain, anger, and
19 confusion." The bishops acknowledged that "in the past, secrecy has created an
20 atmosphere that has inhibited the healing process and, in some cases, enabled sexually
21 abusive behavior to **be repeated.**" Ibid P. 5 of the Report dated February 27, 2004.

17 Relevance

18 The relevance goes to prior notice and ratification.

19 Privacy

20 The compelling need for the information is that the church files are the only source of
21 information to prove prior notice.
22

23 Response to Request No. 4: (Personal File of Fr. Illo):

24 Please see plaintiffs separately filed reply brief addressing the constitutional law issues
25 raised by defendants.

1 **Response to Request No. 6: (Complaints of Misconduct by Fr. Illo):**

2 Please see plaintiffs separately filed reply brief addressing the constitutional law issues
3 raised by defendants.

4 **Response to Request No. 7: (Documents Exchange Between the Defendants):**

5 Defendant cites *Oxy Resources California v. Superior Court* (2004) Cal. App. Lexis 173
6 as standing for proposition that the “common interest doctrine” protects communication between
7 defense counsels. The case makes the distinction that this doctrine is different and separate from
8 the “joint defense privilege”

9 Ironically, defendant did not cite the “common interest doctrine” as an objection in his
10 responses to the interrogatory, defendant cited the “joint defense privilege” (which incidentally
11 the court in *Oxy*, agrees is **not** a recognized privilege in California) **not** the “common interest
12 doctrine” and therefore it is waived. “Moreover, there is no provision for filing **subsequent**
13 **objections**. Thus, even where a timely response is made, the responding party **cannot** later add
14 objections without a court order granting relief from the waiver. *Scottsdale Ins. Co. v. Sup. Ct.*
15 (*Spyglass Homeowners Ass'n*) (1997) 59 Cal.App.4th 263, 273, 69 Cal.Rptr.2d 112, 118 (citing
16 text)” directly quoted from *Weil and Brown, Civil Procedure before Trial*, Chapter 8 Section
17 8:1101.

18 Last but not least, the court should not even recognize the *Oxy* case as controlling
19 authority as it is still subject to further appeal by the courts as the 40 day review period has not
20 yet passed in which the case could be ordered by a higher court to be de-published.

21
22 **Responses 8-14:**

23 These request encompass witness statements acquired by the defendant in what they
24 claim were part and parcel of a “canonical investigation” and therefore privileged from discovery
25 by the “ecclesiastical” umbrella. Ironically, the objections in the responses did not state any legal

1 authority such as First Amendment to support their claims for privilege. Plaintiff's asked for
2 clarification of this "canonical investigation, ecclesiastical process" privilege, months ago,
3 through an invitation to meet and confer with defendants, arguing that no such privilege could be
4 found in California law. Defendants did not meet and confer, and/or further explain the objection
5 and/or file supplemental responses. Plaintiffs would argue that any objections under the First
6 Amendment Establishment Clause are now subject to **waiver**.

7 Thus, even where a timely response is made, the responding party **cannot** later add
8 objections without a court order granting relief from the waiver. *Scottsdale Ins. Co. v. Sup.Ct.*
9 (*Spyglass Homeowners Ass'n*) (1997) 59 Cal.App.4th 263, 273, 69 Cal.Rptr.2d 112, 118 (citing
10 text)" directly quoted from *Weil and Brown, Civil Procedure before Trial*, Chapter 8 Section
11 8:1101.

12
13 **Requests 17-19, and 21 (Requesting Documents to Support Form Interrogatory Responses).**

14 Again, only **after** a motion is filed, defendants agree to provide the documents requested,
15 although non have been identified with any specificity in their interrogatory responses to date.

16 Plaintiff requests that the court order the defendant to produce a privilege log as to those
17 documents, he claims are privileged.

18
19 **Request No. 28: (Documents to Support the Affirmative Defenses Plead in Defendants**

20 **Answer identified in Form Interrogatory 15.1)**

21 It takes law and motion for this defendant to **finally** admit in his opposition that he has no
22 documents to support his illogical defenses, which he continues to maintain in his answer. The
23 court should also note that as of the time of the filing of this response, defendant has still not
24 provided plaintiff with a cogent response to form interrogatory 15. 1!
25


1 **Request No. 29: (Documents between the Diocese and Sister Barbara)**

2 See the arguments set forth in Response 8-14 above. Based on the literal manner in which
3 the objection was made, the objections are not legally proper and are therefore waived.

4
5 **Request No. 30: (Telephone Documents regarding Fr. Arakal for May thru December**
6 **2001)**

7 See plaintiff's separately filed reply brief, which responds to defendant's constitutional
8 arguments.

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11 Dated: March 1, 2004

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George J. MacKoul
Attorney for Plaintiffs