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JF FILED

COURT OF APPEALS
FEB 22 11 11

BY *Dorenda Reed*
DEPUTY

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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,)
17 **Plaintiffs,)**
18 **vs.)**
19 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA)**
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,)**
BISHOP STEVEN BLAIRE AND TBE DIOCESE)
21 **OF STOCKTON, ET AL.,)**
22 **Defendants.)**
DEPARTMENT: 41
TRIAL JUDGE: HON. ELIZABETH HUMPHREYS
TRIAL DATE: FEBRUARY 22, 2005

23
24 **I**
25 **ISSUE PRESENTED**

26 Plaintiff's motion seeks to preclude defendants from introducing evidence relating to
27 personal letters, emails, or correspondence fro the plaintiffs and/or their immediate family to

1 defendant FATHER JOSEPH ILLO. Defendants FATHER JOSPEH ILLO, MONSIGNOR
2 RICHARD RYAN, BISHOP STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC BISHOP
3 OF STOCKTON, a Corporation Sole, (hereinafter DEFENDANTS) opposes this motion in its
4 entirety.

5 II.

6 SUMMARY OF ARGUMENT

7 Plaintiffs are taking the position that the content of any correspondence from Plaintiffs or
8 their family members to FATHER JOSEPH ILLO is not relevant or admissible for any purpose
9 in this case. This position is unfounded and overlooks the clear relevance of such evidence for
10 the purpose of supporting DEFENDANTS' affirmative defense to Plaintiffs' sixth and seventh
11 causes of action cause of action for slander and libel. Furthermore, these letters are relevant as
12 impeachment evidence in addressing the credibility of the Plaintiffs.
13

14 III.

15 ARGUMENT

16 A. CORRESPONDENCE FROM PLAINTIFFS OR THEIR FAMILY MEMBERS TO
17 FATHER JOSEPH ILLO ARE RELEVANT FOR THE PURPOSE OF
18 SUPPORTING DEFENDANTS' AFFIRMATIVE DEFENSES AND AS
IMPEACHMENT EVIDENCE

19 1. Evidence Of Correspondence From Plaintiffs Or Their Family Members To
20 FATHER JOSEPH ILLO Is Relevant To Support DEFENDANTS'
Affirmative Defense

21 Except as otherwise provided by statute, all relevant evidence is admissible. California
22 Evidence Code Section 351. Relevant evidence is defined as evidence, including evidence
23 relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to
24 prove or disprove any disputed fact that is of consequence to the determination of the action.
25 California Evidence Code Section 351. This includes evidence that tend to prove or disprove any
26 material issue raised by the pleadings. Foster v. Keating (1953) 120 Cal. App. 2d 435, 436.
27

1 Plaintiffs' complaint contains causes of action against DEFENDANTS for slander and
2 libel. In any action for libel or slander, the defendant may, in his answer, allege both the truth of
3 the matter charged and any mitigating circumstances. Furthermore, whether he proves the
4 truthfulness or not, he may give in evidence the mitigating circumstances. California Code Of
5 Civil Procedure Section 461. This is precisely what DEFENDANTS have done by virtue of their
6 answer pleading an affirmative defense of truthfulness and plan to do in the course ^{of} the trial by
7 presenting evidence as to the truthfulness of any alleged defamatory statements by
8 DEFENDANTS.

9
10 The law surrounding defenses to claims of defamation is well established. The clearest
11 defense to such causes of action is the truth of the alleged statements. Draper v. Hellman
12 Commercial Trust & Savings Bank (1928) 203 Cal 26, 34; Swaffield v. Universal Eesco Corp.
13 (1969) 271 Cal.App.2d 147, 164. Furthermore, substantial truth is sufficient to establish this
14 defense. It is necessary for a defendant to prove only the substantial truth of the publication and
15 not the literal truth. Emde v. San Joaquin County Cent. Labor Council (1943) 23 Cal 2d 146,
16 160; Southwell v. Mallery, Stern & Warford (1987) 194 Cal.App.3d 140.

17
18 Plaintiffs have raised the veracity of statements allegedly made by FATHER ILLO
19 regarding KATHLEEN MACHADO's feelings towards him within their pleadings by virtue of
20 their causes of action for slander and libel. As such, any evidence that tends to prove or disprove
21 the truthfulness of those alleged statements is relevant. This included evidence in the form of
22 correspondence from Plaintiffs or their family members that discuss the nature of KATHLEEN
23 MACHADO's feelings for FATHER ILLO and the relationship he had with her family.

24
25 **2. Evidence Of Correspondence From Plaintiffs Or Their Family Members To**
26 **FATHER JOSEPH ILLO Is Relevant As Impeachment Evidence That**
27 **Addresses The Credibility Of Plaintiffs**

28 California Evidence Code Section 780 states in pertinent part:

1 "Except as otherwise provided by statute, the court or jury may consider in
2 determining the credibility of a witness any matter that has any tendency in reason
3 to prove or disprove the truthfulness of his testimony at the hearing, including, but
4 not limited to any of the following:

- 5 (f) The existence or nonexistence of a bias, interest, or other motive
- 6 (h) A statement made by him that is inconsistent with any part of his testimony at
7 the hearing."

8 It is anticipated Plaintiffs will testify during the course of this trial. If they do, they are
9 subject to cross examination as to their credibility. A long line of precedent beginning as early as
10 1939 has held that a witness' bias, prejudice, interest, and hostility, or friendship towards the
11 other parties are subjects for cross examination. People v. Payton (1939) 36 Cal.App.2d 41, 96.
12 Furthermore, wide latitude should be given to counsel in developing facts which show bias,
13 prejudice or interest on the part of a witness. People v. Avelar (1961) 193 Cal.App.2d 631.
14 Statements contained in letters from Plaintiffs or their family members to FATHER ILLO should
15 be admitted for the purpose of addressing the credibility of Plaintiffs and showing the existence
16 of a bias or other motive. In addition, it is anticipated Plaintiffs will attempt to downplay the
17 extent of their relationship with FATHER ILLO. The statements contained in letters from
18 Plaintiffs to FATHER ILLO should also be admitted as a statement that is inconsistent with
19 Plaintiffs' testimony at trial.

20 **3. The Probative Value Of Such Evidence Is Not Substantially Outweighed By**
21 **Substantial Danger Of Undue Prejudice**

22 Plaintiffs argue that any evidence regarding correspondence from Plaintiffs or their family
23 members to FATHER JOSEPH ILLO should be excluded under California Evidence Code
24 Section 352. This section provides in pertinent part that the court may, in its discretion, exclude
25 evidence if its probative value is substantially outweighed by the probability that its admission
26 will create substantial danger of undue prejudice. Plaintiffs fail to acknowledge the relevance
27 and probative value of these correspondences. As explained above, these correspondences are
28 admissible to support DEFENDANTS' affirmative defense of truth to Plaintiffs' causes of action
Defendants' Opposition To Plaintiffs' Motion In Limine Number One

1 for slander and libel. Furthermore, they are admissible to address the credibility of Plaintiffs
2 should they choose to testify during the course of this trial. The high probative value of the
3 correspondences from Plaintiffs or their family members to FATHER ILLO is not substantially
4 outweighed by a danger of undue prejudice and therefore should not be excluded under Section
5 352.

6 **IV.**

7 **CONCLUSION**

8 Correspondences from Plaintiffs or their family members to FATHER ILLO are
9 admissible to support DEFENDANTS' affirmative defense of truth to Plaintiffs' causes of action
10 for slander and libel. Furthermore, they are admissible to address the credibility of Plaintiffs
11 should they choose to testify during the course of this trial. As such, Plaintiffs motion in limine
12 to exclude such evidence should be denied.
13

14
15
16 Dated: February 18, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

17
18 By: 
19 MICHAEL L. PHILLIPS

PROOF OF SERVICE

FILED

FEB 22 AM 11:10

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN
CV018440

CLERK

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:

1. DEFENDANTS' OPPOSITION TO PLAINTIFFS' FIRST MOTION IN LIMINE TO EXCLUDE ALL REFERENCE TO AND THE INTRODUCTION OF LETTERS AUTHORED BY PLAINTIFFS OR THEIR IMMEDIATE FAMILY MEMBERS TO DEFENDANT FR. ILLO;
2. DEFENDANTS' OPPOSITION TO PLAINTIFFS' THIRD MOTION IN LIMINE TO EXCLUDE ALL REFERENCE TO EVIDENCE AND/OR ALL ARGUMENTS REGARDING AMBER LOMAS' AND RACHEL LOMAS' BIOLOGICAL FATHER BEING A VICTIM OF SEXUAL ABUSE AND/OR A PEDOPHILE INCLUDING FOR IMPEACHMENT;
3. DEFENDANTS' OPPOSITION TO PLAINTIFFS' FOURTH MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE, REFERENCE TO EVIDENCE, AND/OR ARGUMENT REGARDING KATHLEEN MACHADO'S PHYSICAL PROXIMITY AND ANY EVIDENCE REGARDING THIS PROXIMITY TO RACHEL, AMBER, AND KOLLEN LOMAS AT THE TIME OF THE ALLEGED MOLESTATION;
4. DEFENDANTS' OPPOSITION TO PLAINTIFFS' FIFTH MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE, REFERENCE TO EVIDENCE, AND/OR ARGUMENT REGARDING ATTORNEY MACKOUL'S ALLEGED DISCUSSIONS WITH PLAINTIFF'S TREATING PSYCHOLOGIST DIAN STEPHENS OUTSIDE THE PRESENCE OF DEFENSE COUNSEL;
5. DEFENDANTS' REPLY TO PLAINTIFFS' SEVENTH MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE REGARDING CERTAIN STATEMENTS MADE DURING THE TAPED INTERVIEW OF KATHLEEN MACHADO AND AMBER LOMAS BY FATHER RICHARD RYAN AND SISTER BARBARA;
6. DEFENDANTS' OPPOSITION TO PLAINTIFFS' EIGHTH MOTION IN LIMINE TO EXCLUDE ALL EVIDENCE, REFERENCE TO EVIDENCE, AND/OR ARGUMENT REGARDING CERTAIN STATEMENTS MADE BY ANY PERSON ON THE VIDEOTAPE INTERVIEW OF AMBER AND RACHEL LOMAS BY THE STANISLAUS DISTRICT ATTORNEY'S OFFICE;
7. DEFENDANTS' OPPOSITION TO PLAINTIFF'S NINTH MOTION IN LIMINE TO ALLOW THE FIRST AMENDED COMPLAINT TO BE FILED AGAINST THE DEFENDANTS.

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

1 GEORGE J. MACKOUL, ESQ.
2 SABBAAH AND MACKOUL
3 49 LOCUST STREET
4 FALMOUTH, MASS 02540
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15 MICHAEL COUGHLAN, ESQ.
16 LAW OFFICES OF MICHAEL D. COUGHLAN
17 3031 W. MARCH LANE, #210 WEST
18 STOCKTON, CA 95219
19 Fax: 957-5338

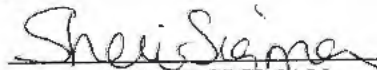
20 xx *BY FACSIMILE* Facsimile to the Facsimile telephone number(s) and at the time(s) indicated above, on the date of
21 execution of this document, as set forth below.

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

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

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

32 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
33 Served and executed on February 18, 2005, at Stockton, California.

34 
35 SHERI SIGMAN

1 prejudicial, improper and contrary to law, even if the court were to sustain an objection and
2 instruct the jury not to consider such evidence.

3 This motion is based upon the memorandum of Points and Authorities accompanying this
4 motion, on the papers and records on file herein and on such oral and documentary evidence as
5 may be presented at the hearing of this motion.

7 DATED: 2/14/05

8
9 BY 

10 MICHAEL D. COUGHLAN
11 Attorney for Defendant,
FR. FRANCIS ARAKAL JOSEPH

12 **MEMORANDUM OF POINTS AND AUTHORITIES**

13 **I**

14 **FACTUAL BACKGROUND**

15 A.W. Richard Sipes is an expert witness designated by plaintiffs in this matter. While he
16 has not conducted any examination of any plaintiff or defendant in this action, and has reviewed
17 only select information provided by plaintiffs' counsel, based upon discovery it is anticipated that
18 Mr. Sipes intends to offer opinions based upon his beliefs concerning the credibility of witnesses,
19 and upon speculation and/or conjecture. It is further anticipated that Mr. Sipes will attempt to
20 provide opinions concerning the truthfulness of allegations made in this matter based upon prior
21 acts of non parties remote in time, scope and nature to this case.

22
23 **II**

24 **EXPERT TESTIMONY IS LIMITED TO MATTERS BEYOND COMMON**
25 **EXPERIENCE OF POTENTIAL JURORS**

1 An expert witness's testimony in the form of an opinion is limited to subject matter that is
2 sufficiently beyond common experience that it will assist the trier of fact to understand the
3 evidence or to determine a fact in issue, *Evidence Code Section 801(a)*. As such, the first
4 requirement for admissibility of an expert's opinion testimony is that it is beyond common
5 experience so that it will assist the trier of fact. *People v Champion*(1995) 9 Cal.4th 879, 924.

6 If the subject on which an expert's opinion is offered is of such common knowledge that
7 persons of ordinary intelligence can draw inferences or conclusions from non opinion testimony
8 as easily as the witness can, such expert testimony is not admissible. *People v Szeto* (1981) 29
9 Cal.3rd 20, 39. Expert testimony is not admissible if it consists of inferences and conclusions
10 which can be drawn as easily and intelligently by the trier of fact as by the witness. *People v*
11 *Valdez* (1997) 58 CalApp 4th ,494

12
13 **III**
14 **EXPERT OPINIONS ARE INADMISSABLE IF BASED UPON SPECULATION AND**
15 **CONJECTURE**

16 When an expert's opinion is purely conclusory because it is unaccompanied by a
17 reasoned explanation connecting factual predicates to ultimate conclusions, the opinion has no
18 evidentiary value because the expert opinion is worth no more than the reasons upon which it is
19 based. *Jennings v Palomar Pomerando Health Systems, Inc.* (2003) 114 CalApp 4th. 1108.

20 Although expert opinion may embrace the ultimate issue of a criminal prosecution, an
21 expert opinion that the defendant is guilty of the crime charged is not admissible. *People v*
22 *Barnes* 92004) 19 CalRptr3d, 229, and likewise, a witness may not express an opinion of a
23 defendant's guilt. *People v Coffman* (2004) 34 Cal 4th, 1.

24
25 **IV**
26

THE COURT MAY EXCLUDE PREJUDICIAL MISLEADING OR CONFUSING EVIDENCE

Pursuant to Evidence Code Section 352, the court has the discretion to exclude evidence if its probative value is substantially outweighed by the probability that its admission will unduly consume time, create substantial danger of undue prejudice, confuse the issues or mislead the jury.

**V
ARGUMENT**

Plaintiffs' designated expert A. W. Richard Sipes intends to offer "expert" opinions that defendant Fr. Francis Arakal Joseph committed acts of sexual abuse upon the plaintiffs. These opinions are based upon nothing more than Mr. Sipes' beliefs in the truthfulness of the plaintiffs and the lack of such on the part of the defendants; not on specific facts of this case, but on his own beliefs arising from acts committed by unnamed others dating decades into the past. Mr. Sipes then goes on to speculate that defendant Arakal Joseph, having been reported at an early stage in his career has been prevented from becoming a notorious serial molester of children. These highly prejudicial and speculative opinions are again based not on specific scientific evidence related to this case, but only on acts of others, not party to this matter.

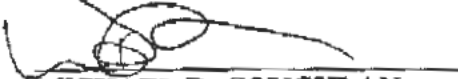
Mr. Sipes' opinions as to credibility of witnesses are totally within the province of the jury and should be excluded under Evidence Code section 801(a). It is the jury, not witnesses that must determine whether any witness is truthful or not despite, Mr. Sipes attempt to offer his crystal ball or ability as a lie/truth detector as expert opinion.

Sipes' opinions that defendant Arakal committed acts against the plaintiffs, not based upon the defendant's own propensities, but upon prior acts of others, years if not decades or centuries ago, is without foundation and so highly prejudicial and non probative to warrant

1 exclusion under Evidence Code Section 352. Should Mr. Sipes' opinions be accepted in this
2 case, defendant Arakal would find himself in the position of defending not only his own actions,
3 but also those of unnamed others.

4 Based upon the foregoing the court is requested to exclude Mr. Sipes' opinion testimony
5 on the grounds that it will add nothing of probative value to assist the trier of fact, confuse the
6 jury as to the issues in this case, and cause extreme prejudice to the defendant.

7
8
9 DATED: February 14, 2004


MICHAEL D. COUGHLAN
Attorney for Defendant
FR. FRANCIS ARAKAL JOSEPH

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

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN

I am employed in the County of San Joaquin, State of California. I am over the age of 18 years and not a party to the within action. My business address is 3031 W. March Lane, Suite 210 West, Stockton, California 95207.

On February 14, 2005, I served the attached:
Motion in Limine Regarding Testimony of A.W. Richard Sipes
 By placing true copies thereof enclosed in a sealed envelope with postage thereon fully prepaid, addressed as follows:

Anthony Boskovich, Esq.
28 North First St., 6th Floor
San Jose, CA 95113
FAX: (408) 286-5170

George J. Mackoul, Esq.
Sabbah and Mackoul
49 Locust Street
Falmouth, Mass 02540
FAX: (508) 495-4115

Vladimir F. Kozina, Esq.
Mayall, Hurley, Knutsen, Smith & Green
2453 Grand Canal Blvd. Second Floor
Stockton, CA 95207
FAX: (209) 473-4818

BY FACSIMILE:

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

I caused such envelope to be deposited in the mail at Stockton, California. I am readily familiar with the firm's practice for the collection and processing of correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business.

I deposited such envelope in the mail at Stockton, California.

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

Executed on February 14, 2005, at Stockton, California.


Crystal Kyes

1 MICHAEL D. COUGHLAN, SBN 124398
 2 ATTORNEY AT LAW
 3 3031 W. MARCH LN., SUITE 210 WEST
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4 Attorneys for Defendant FR. FRANCIS ARAKAL JOSEPH

cs

Filed FEB 23 2005

ROSA JUNQUEIRO, CLERK

By Charlene Gray
 DEPUTY

5
 6
 7
 8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN
 9

10 KATHLEEN MACHADO, et al,
 Plaintiffs,

11 vs.

12 FR. JOSEPH ILLO, et al,
 Defendants

Case No.: CV018440

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**DEFENDANT'S MOTION IN LIMINE
 REGARDING OPINIONS OF DEPUTY
 DISTRICT ATTORNEY NATE BAKER**

17 Comes now defendant, Fr. Francis Arakal Joseph, who moves the court in limine for an
 18 order that plaintiffs, not refer to, interrogate any witness concerning, comment on, or attempt to
 19 suggest to the jury any opinions or comments of Stanislaus County Deputy District Attorney
 20 Nate Baker with regard to the criminal investigation of this moving defendant, and more
 21 specifically his opinions and beliefs as to the validity of the claims or defenses of the parties to
 22 this action.


23 This motion is made on the ground that such evidence is irrelevant and inadmissible in
 24 this action, and that any attempt to convey such information to the jury would be highly
 25
 26

2.

1 prejudicial, improper and contrary to law, even if the court were to sustain an objection and
2 instruct the jury not to consider such evidence.

3 This motion is based upon the memorandum of Points and Authorities accompanying this
4 motion, on the papers and records on file herein and on such oral and documentary evidence as
5 may be presented at the hearing of this motion.
6

7 DATED: 2/22/05

8
9
10 BY 
11 MICHAEL D. COUGHLAN
12 Attorney for Defendant,
13 FR. FRANCIS ARAKAL JOSEPH

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 I

16 **FACTUAL BACKGROUND**

17 A review of plaintiffs' witness list reveals it to include the name of Stanislaus County
18 Deputy District Attorney Nate Baker, who following a review of the evidence obtained during
19 the investigation of defendant Arakal, appears to have made the decision not to prosecute the
20 case due to a lack of evidence. Comments seemingly attributed to Mr. Baker, included within
21 the subpoenaed police report include his opinions speculating as to the likely defense tactics and
22 the possibility of a jury finding reasonable doubt based upon the evidence. Baker seems to
23 indicate that while he personally disagrees, he would not criminally charge the moving
24 defendant, exercising his prosecutorial discretion not to do so.

25 Such opinion testimony has no relevance to the present matter, as it adds nothing to the
26 jury, which will have the opportunity to review the same evidence plus that obtained by both

1 sides during discovery, before arriving at its own conclusions. Admission of Mr. Baker's
2 opinions provides nothing in the form of probative value, while having the obviously high
3 prejudicial effect as coming from a member of law enforcement, who has already made a
4 decision on the merits of the case.

5
6 **II**
EXPERT TESTIMONY IS LIMITED TO MATTERS BEYOND COMMON
EXPERIENCE OF POTENTIAL JURORS

7
8 An expert witness's testimony in the form of an opinion is limited to subject matter that is
9 sufficiently beyond common experience that it will assist the trier of fact to understand the
10 evidence or to determine a fact in issue, *Evidence Code Section 801(a)*. As such, the first
11 requirement for admissibility of an expert's opinion testimony is that it is beyond common
12 experience so that it will assist the trier of fact, *People v Champion(1995) 9 Cal.4th 879, 924.*

13 If the subject on which an expert's opinion is offered is of such common knowledge that
14 persons of ordinary intelligence can draw inferences or conclusions from non opinion testimony
15 as easily as the witness can, such expert testimony is not admissible. *People v Szeto (1981) 29*
16 *Cal.3rd 20, 39.* Expert testimony is not admissible if it consists of inferences and conclusions
17 which can be drawn as easily and intelligently by the trier of fact as by the witness. *People v*
18 *Valdez (1997) 58 CalApp 4th, 494.*

19
20 In the present matter Mr. Baker, has had the benefit of observing the interviews of
21 plaintiffs Amber and Rachel Lomas conducted by a district attorney staff member, possibly
22 reviewing evidence in the form of letters written by the plaintiffs to defendant Illo and talking
23 with the investigating police officer Bali. Following his review of this evidence, Mr. Baker's
24 administrative decision not to prosecute simply boiled down to his assessment of how a jury
25 would react to the case and as such demonstrates that he possesses no opinion on any subject
26

1 beyond the common experience of jurors who will ultimately be asked to arrive at their own
2 opinions on the same evidence.

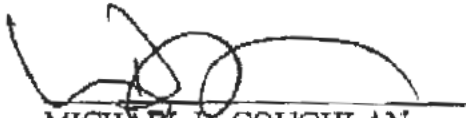
3 In addition, to the extent that his opinion goes to the heart of this defendant's guilt or
4 innocence of the matters serving as the basis of the lawsuit, they are also inadmissible as,
5 although expert opinion may embrace the ultimate issue of a criminal prosecution, an expert
6 opinion that the defendant is guilty of the crime charged is not admissible. *People v Barnes*
7 *92004) 19 CalRptr3d, 229; People v Coffman (2004) 34 Cal 4th, 1.*

8
9 **IV**
THE COURT MAY EXCLUDE PREJUDICIAL MISLEADING OR CONFUSING
10 **EVIDENCE**

11 Pursuant to Evidence Code Section 352, the court has the discretion to exclude evidence
12 if it probative value is substantially outweighed by the probability that its admission will unduly
13 consume time, create substantial danger of undue prejudice, confuse the issues or mislead the
14 jury. Evidence from a county prosecutor that he held a personal belief in the defendant's guilt for
15 a crime or skepticism concerning a theory of defense, while having no probative value is of such
16 a nature that it would highly prejudice the defendant to the point of depriving him of any
17 reasonable ability to receive a fair trial on the actual evidence.

18 Based upon the foregoing the court is requested to exclude Mr. Baker's opinion
19 testimony on the grounds that it will add nothing of probative value to assist the trier of fact,
20 confuse the jury as to the issues in this case, and cause extreme prejudice to the defendant.

21
22 DATED: February 22, 2004

23 
24 MICHAEL D. COUGHLAN
25 Attorney for Defendant
26 FR. FRANCIS ARAKAL JOSEPH

1 George J. MacKoul (Bar No. 170586)
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11 San Jose, California 95113-1210
12 Phone: 408-286-5150
13 Fax: 408-286-5170

14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

20 vs.

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

) Case No.: CV018440

) **PLAINTIFFS' MOTION IN LIMINE #1**
) **TO EXCLUDE ALL REFERENCE TO**
) **AND THE INTRODUCTION OF**
) **PERSONAL LETTER AUTHORED BY**
) **ANY OF THE PLAINTIFFS OR THEIR**
) **IMMEDIATE FAMILY TO DEFENDANT**
) **FR. JOSEPH ILLO, EITHER**
) **SUBSTANTIVELY OR FOR THE**
) **PURPOSES OF IMPEACHMENT.**

26 **Honorable Elizabeth Humphreys**
27 **DEPT: 41**
28 **TRIAL DATE: FEBRUARY 22, 2005**

29 **TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

30 PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order
31 excluding any and all evidence, references to evidence, testimony or argument relating to any
32 personal letters personal letters/emails and or correspondences from the plaintiffs and/or their

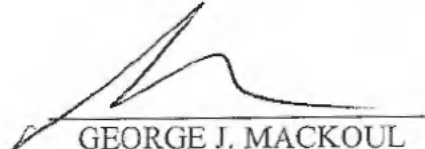
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Filed FEB 15 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

1 immediate family member to defendant Fr. Joseph Illo either substantively or for purposes of
2 impeachment.

3 This motion is based upon the grounds that any personal letters by any of the named
4 plaintiffs and or their family members is irrelevant prove or disprove any of he allegations stated
5 in the complaint or any affirmative defenses stated by the defendants in their answers to the
6 complaint. Therefore the evidence should be excluded under Evidence Code Section 350.

7
8 Further, the letters contain irrelevant, collateral or other inappropriate matter that is likely
9 to prejudice the party seeking exclusion. The motion is based upon the authority of Evidence
10 Code Section 352 and leading cases that have approved of the exclusion of such evidence and is
11 also based on the supporting Memorandum of Points and Authorities, the pleadings and papers on
12 file in this action, and upon such of the argument and evidence as may be presented prior to or at the
13 hearing of this matter.

14 Dated: 7-15-05


GEORGE J. MACKOUL
SABBAH & MACKOUL
Attorneys for the Plaintiffs

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1.

3 PRELIMINARY STATEMENT

4 This case is about the alleged molestation of two minors by a catholic priest, Fr. Francis
5 Arakal. The plaintiffs are also alleging intentional infliction of emotional distress claim against Fr.
6 Joseph Illo, Fr. Arakal, and others for the further emotional abuse of Amber Lomas after she
7 reported the abuse to Fr. Illo on September 11, 2001. Plaintiffs have also alleged that the defendants
8 Diocese of Stockton, Bishop Steven Blair and Fr. Richard Ryan implicitly ratified the conduct of the
9 two priests and in the alternative acted negligently by not complying with their own policies and
10 procedures for protecting children from the alleged abuse.
11

12 The defendants will seek to introduce evidence about the emotional relationship between Fr.
13 Illo and Kathleen Machado, the mother of the minor plaintiffs. Most of this evidence is in the form
14 of personal letters from Machado and her children to Fr. Illo.

15 This evidence is first and foremost lacking in foundation. Not one of the correspondences in
16 question contain any evidence sufficient to support a finding that the Plaintiffs planned or were even
17 motivated to fabricate the allegation of sexual abuse against defendant Arakal, in order to get
18 revenge on Fr. Illo. Evidence Code 403 (a).

19 Second, neither are any of the correspondences sent by the mother, Kathleen Machado or
20 the other named plaintiffs relevant to the issues stated in the pleadings, namely the alleged acts of
21 sexual abuse by the Fr. Arakal upon Ms. Machado's children. The emotional issues between the
22 mother and the non-molesting priest are therefore, irrelevant. Evidence Code 350.
23
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1 Finally, the defendants' true intent in introducing this evidence is hold up the mother of the
2 minor children with ridicule and scorn with the hope of diverting the juries attention away from the
3 defendants illegal conduct.

4 The plaintiffs respectfully request that this court fashion an order excluding any and all
5 evidence, references to evidence, testimony or argument relating to any personal letters/emails
6 and or correspondences from the plaintiffs and/or their immediate family members to defendant
7 Fr. Joseph Illo either substantively or for purposes of impeachment.

8
9 **2.**

10 **THE PRO-OFFERED EVIDENCE LACKS FOUNDATION**

11 The defendants have no preliminary fact, contained in any of the correspondences, that
12 would prove that Kathleen Machado had plotted revenge against Fr. Illo by fabricating with the
13 help of her children the alleged acts of molestation by Fr. Arakal.

14
15 Evidence Code Section 403(a) states in part:

16 "The proponent of the proffered evidence has the burden of producing evidence as to the
17 existence of the preliminary fact, and the proffered evidence is inadmissible unless the court
18 finds that there is evidence sufficient to sustain a finding of the existence of the preliminary
19 fact...

20 Also see, Hyatt v. Sierra Boat Co. (1978) 79 Cal.App.3d 325, 337-39 (proof of
21 foundational fact required before evidence may be referenced at trial).

22 There are absolutely no preliminary facts to support a finding that the correspondences
23 between plaintiffs and Fr. Illo are evidence of a plot or even a motive for a plan to fabricate the
24 allegations stated in the complaint. None of the correspondences at issue even hint of such a plot
25 or plan, i.e. fabrication of sexual abuse against Fr. Arakal as a means of revenge against Fr. Illo.

1 Based on this point alone the evidence should be excluded.

2
3 3.

4 **ANY REFERENCES TO OR INTRODUCTION OF THE LETTERS ARE**
5 **IRRELEVANT AND SHOULD BE EXCLUDED**

6 Evidence Code Section 350 states that "(n)o evidence is admissible except relevant
7 evidence." Relevant evidence is defined by Evidence Code Section 210 as "having any tendency
8 in reason to prove or disprove any disputed fact that is of consequence to the determination of
9 the action."
10

11 The reasons why the letters and any reference to the letters are irrelevant is because:

- 12 1. The correspondences do not provide facts, which prove or disprove any of the
13 allegations stated in the complaint against Fr. Arakal for his alleged sexual
14 misconduct with the minor children (Counts 1 and 2 for sexual battery). Further, the
15 correspondences do not prove or disprove Fr. Arakal's negligence towards the
16 children (count 3) or his intentional infliction of emotional distress (count # 4 and 5)
17 upon the children. Finally, The correspondences are not relevant to prove any of the
18 affirmative defenses plead in the answers on file by defendant Arakal.
- 19 2. The correspondences do not prove or disprove, or otherwise justify any of the
20 allegations on file against Fr. Illo for his emotional abuse of Amber Lomas on
21 September 11, 2001. Likewise they do not support any affirmative defenses on file
22 by Fr. Illo.
- 23 3. The correspondences do not prove, disprove or otherwise justify the negligence of
24 the Bishop, the Diocese or any of the other named defendants for the actions of their
25 priest in contradiction of their expressed policies and procedures. The

1 correspondences do not prove or disprove any of the affirmative defenses plead by
2 the Diocese, the Bishop or the other priests. The same holds true for the conspiracy
3 count.

- 4 4. The letters do not prove, disprove or otherwise justify the defamatory statements
5 made by Fr. Illo to Amber Lomas (“all your mother wants to do is have sex with
6 me”), as none of the correspondences contain sexual, or sexually solicitous language.
7 In fact plaintiff Machado testified under oath that she did not have any romantic
8 feelings for Fr. Illo, rather she “loved him like a brother”. Issues outside the
9 pleadings should not be a matter for the jury, see, Hughes v. Blue Cross of Northern
10 California (1989) 215 Cal.App.3d 832, 858 (evidence cannot be used to establish an
11 issue that the parties have not made in their pleadings). Cota v. County of Los
12 Angeles (1980) 105 Cal.App.3d 282, 293 (evidence that is not pertinent to the issues
13 raised by the pleadings is immaterial and it is error to allow introduction of such
14 evidence); see also Rainer v. Community Memorial Hosp. (1971) 18 Cal.App.3d
15 240, 253 (same). Earl v. Saks & Co. (1951) 36 Cal. 2d 602, 607 (court may properly
16 reject evidence not relevant to any issue raised by pleadings). Fuentes v. Tucker
17 (1947) 31 Cal.2d 1, 5 (evidence that is not pertinent to issues raised by pleadings is
18 immaterial and it is error to allow introduction of such evidence). Hanley v. Murphy
19 (1924) 70 Cal.App. 157, 166 (party may not make out a case by giving facts not
20 stated in complaint); Nordholt v. Nordholt (1891) 87 Cal. 552, 556 (same). Crusoe v.
21 Clark (1899) 127 Cal. 341, 344 (evidence relating to matters in which the pleadings
22 are silent is immaterial and inadmissible).
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**THE CORRESPONDANCES SHOULD BE EXCLUDED TO AVOID PREJUDICIAL
JURY CONFUSION**

Evidence Code Section 352 states as follows: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, **of confusing the issues, or of misleading the jury.**" (Emphasis added.)

In Adler v. Elphick (1986) 184 Cal.App.3d 642, 650 the court held that exclusion of a letter addressing matter that was not issue at issue in case was justified as it would tend to mislead the jury, bring up collateral issues and waste the court's time.

Also in O'Gan v. King City Joint Union High School (1970) 3 Cal.App.3d 641, 645 the court held that exclusion of a letter under Section 352, **even if admissible for impeachment**, should not be allowed to come into evidence, where there is a danger that the jury might consider it as substantive evidence. (Emphasis added).

In the present case, the defendants have made it clear that they intend to focus the attention on the jury on the mother of the victims in this case. Make no mistake their intent is clear. They want to hold the mother up to scorn and ridicule before the jury for the following theories, neither of which are based in law, or any evidence to date:

1. That Kathleen Machado planned and orchestrated, with her children, the allegations of sexual abuse by Fr. Arakal in order to get back at Fr. Illo for supposedly spurning her affection for him.
2. That Kathleen Machado planned and orchestrated the reporting by Amber Lomas of sexual abuse by Fr. Arakal on September 11, 2001 to get back at Fr. Illo.

1 3. That Kathleen Machado was somehow unfit as a mother for having feelings for a
2 priest.

3 4. That Kathleen Machado was somehow unfit for leaving her children in the care of Fr.
4 Illo on September 11, 2001.

5 5. That Kathleen Machado was "staking" Fr. Illo, and was obsessed with him, when the
6 evidence clearly shows that the feeling were mutual, and that Fr. Illo, has a custom
7 and practice of forming close personal relationships with single mothers whom he
8 first counsels, befriends, and then betrays.

9
10 Further, introduction of the letters would create a "side show" and/or soap opera effect to
11 the trial. This would force the jury to focus on the Illo/Machado relationship rather than the harm
12 done to her two children. The court would be inundated with sidebars, objections, and
13 conferences outside the presence of the jury. This would make the trial last another week, at best,
14 as voir dire would have to be expanded.

15 Last but not least, the court has a public policy interest in protecting children from further
16 abuse, by the clerics, the church and their lawyers who seek to crucify the mother of these two
17 children for a crimes against her children she neither committed or is in any way responsible for.
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CONCLUSION

Based on the foregoing, the plaintiff respectfully requests that this Court exclude any and all evidence, references to evidence, testimony or argument relating to any personal letters from the plaintiffs and/or their immediate family members to defendant Fr. Joseph Illo either substantively or for purposes of impeachment.

Dated: 2-15-05



GEORGE J. MACKOUL
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Attorneys for the Plaintiffs

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14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

20 vs.)

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

Case No.: CV018440

PLAINTIFFS MOTION IN LIMINE #2 TO
EXCLUDE ANY EVIDENCE OF A
PRIOR OR PENDING AUTOMOBILE
ACCIDENT CLAIM INVOLVING ANY
OF THE PLAINTIFFS.

Honorable Elizabeth Humphreys
DEPT: 41
TRIAL DATE: FEBRUARY 22, 2005

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order
excluding any and all evidence, references to evidence, testimony or argument relating to a prior

Filed FEB 15 2005

ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

1 automobile accident that occurred on or about 5/18/03, and any injury to plaintiffs arising from
2 that accident.

3 This motion is based upon the grounds that any injuries to plaintiff arising from the prior
4 accident are unrelated to the injuries for which plaintiff is seeking reimbursement in this case,
5 and are therefore irrelevant. Allowing the evidence in this case would prejudice the plaintiff and
6 cause jury confusion.

7 This motion is made under the provisions of Evidence Code Sections 352 and 350, and is
8 based on the supporting Memorandum of Points and Authorities, the pleadings and papers on file in
9 this action, and upon such of the argument and evidence as may be presented prior to or at the
10 hearing of this matter.

11 Dated: February 9, 2005


13 GEORGE J. MACKOUL
14 SABBAAH & MACKOUL
15 Attorneys for the Plaintiffs
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1 exclusion as unduly prejudicial." Clemens v. American Warranty Corp. (1987) 193 Cal.App.3d
2 444, 451; Peat, Marwick, Mitchell & Co. v. Superior Court (1988) 200 Cal.App.3d 272, 288.

3 Evidence Code Section 352 allows the court to exclude evidence where there is a
4 substantial danger that the probative value will be outweighed by the danger of undue prejudice.
5 See People v. Cardenas (1982) 31 Cal.3d 897, 904.

6 Evidence Code Section 402 allows the court to hear and determine the question of the
7 admissibility of evidence outside the presence or hearing of the jury. See Mize v. Atchinson,
8 Topeka & Santa Fe Ry. Co. (1975) 46 Cal.App.3d 436, 448.

9
10 3.

11 **ANY REFERENCES TO PLAINTIFF'S PRIOR INJURIES**
12 **ARE IRRELEVANT AND SHOULD BE EXCLUDED**

13 Evidence Code Section 350 states that "(n)o evidence is admissible except relevant
14 evidence." Relevant evidence is defined by Evidence Code Section 210 as "having any tendency
15 in reason to prove or disprove any disputed fact that is of consequence to the determination of
16 the action." See People v. Kelly (1992) 1 Cal.4th 495, 523. The court has no discretion to
17 admit irrelevant evidence. People v. Keating (1981) 118 Cal.App.3d 172, 179-80.

18 While the general rule is that evidence of a similar injury sustained in a prior accident is
19 relevant to the damages issue in a subsequent case [see Prichard v. Veterans Cab Co. (1965) 63
20 Cal.2d 727, 733-34], evidence of dissimilar injuries is not relevant. In Downing v. Barrett
21 Mobile Home Transport, Inc. (1974) 38 Cal.App.3d 519, 525, the court erred in allowing
22 evidence of an injury from a prior accident where plaintiff was not claiming the injury was
23 caused by subject incident. The court held that the evidence had no probative value. Id. At 525.
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1 In the present case, plaintiff is making no claim for injuries relating to his jaw. The
2 pertinent medical records clearly show that the prior jaw injury is in no way similar to plaintiff's
3 neck and back injuries in this case. See Exhibits "B" and "C."

4 The Court should therefore exclude any and all evidence, including any mention of
5 evidence, relating to the May 18, 2003, motor vehicle accident or any injuries arising from that
6 accident.

7
8 **4.**

9 **EVIDENCE OF PLAINTIFF'S PRIOR ACCIDENT AND INJURIES**
10 **SHOULD BE EXCLUDED TO AVOID PREJUDICIAL JURY CONFUSION**

11 Evidence Code Section 352 states as follows: "The court in its discretion may exclude
12 evidence if its probative value is substantially outweighed by the probability that its admission
13 will (a) necessitate undue consumption of time or (b) create substantial danger of undue
14 prejudice, of confusing the issues, or of misleading the jury." (Emphasis added.)

15 The Court may exclude marginally probative evidence that might easily confuse the jury.
16 Wagner v. Benson (1980) 101 Cal.App.3d 27, 36. See also People v. Wagner (1982) 138
17 Cal.App.3d 473, 481 (exclusion of medical records with confusing medical terminology); O'Gan
18 v. King City Joint Union High School (1970) 3 Cal.App.3d 641, 645 (exclusion of letter that
19 might have been confused as substantive evidence).

20
21 In the present case, there is a substantial danger that jurors might confuse the jury and
22 unfairly prejudice the plaintiff.

23 The Court should therefore exclude any and all evidence, including any mention of
24 evidence, relating to the 5/18/03 , accident or any injuries arising from that accident.

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CONCLUSION

Based on the foregoing, the plaintiff respectfully requests that this Court exclude any testimony or documentary evidence, or mention of any evidence, regarding the accident dated 5/18/03, or any injuries arising from that accident.

Dated: 2-5-05



GEORGE J. MACKOUL
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9 Attorneys for the Plaintiffs

10 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

15 vs.

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

Case No.: CV018440
PLAINTIFF'S MOTION IN LIMINE #3
TO EXCLUDE ALL EVIDENCE,
REFERENCE TO EVIDENCE AND/OR
ALL ARGUMENTS REGARDING
AMBER AND RACHEL LOMAS'
BIOLOGICAL FATHER BEING A
VICTIM OF SEXUAL ABUSE AND/OR A
PEDOPHILE, INCLUDING FOR
IMPEACHMENT.

Honorable Elizabeth Humphreys
DEPT: 41
TRIAL DATE: FEBRUARY 22, 2005

21 TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

22 PLEASE TAKE NOTICE THAT plaintiff hereby moves this court for an order excluding
23 any and all evidence, references to evidence, testimony or argument relating to Rosindo Lomas,
24 the biological father of Amber and Rachel Lomas being a victim of sexual abuse and/or a
25 pedophile, including for impeachment.

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Filed FEB 15 2005

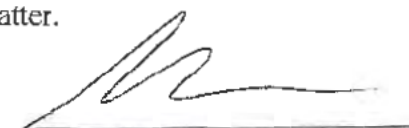
ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

1 The evidence is irrelevant as it does not prove or disprove any of the allegations stated in
2 the complaint or any affirmative defenses stated by the defendants in their answers to the
3 complaint. Therefore the evidence should be excluded under Evidence Code Section 350.

4 Further, pursuant to Evidence Code Section 352 the evidence sought to be excluded is
5 more prejudicial than probative. This motion is based on the supporting Memorandum of Points
6 and Authorities, the pleadings and papers on file in this action, and upon such the argument and
7 evidence as may be presented prior to or at the hearing of this matter.

8 Dated: 2-15-05


GEORGE J. MACKOUL
SABBAH & MACKOUL
Attorneys for the Plaintiffs

**EVIDENCE OF ROSINDO LOMAS' AS BEING HIMSELF A VICTIM OF SEXUAL
ABUSE IS MORE PREJUDICIAL THAN PROBATIVE AND
SHOULD BE EXCLUDED TO AVOID MISLEADING AND CONFUSING THE JURY**

Evidence Code Section 352 states as follows: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Emphasis added.)

The trial court must weigh the admission of the challenged evidence carefully in terms of whether the probative value is greater than the potentially prejudicial effect of its admission; if the prejudicial effect outweighs the probative value, the trial court should exclude the evidence. People v. Cardenas (1982) 31 Cal.3d 897, 904. It is well recognized that the trial court is vested with wide discretion to exclude evidence under section 352 see, Mozzetti v. City of Brisbane (1977) 67 Cal.App.3d 565, 578.

In the case at bar, plaintiffs anticipate that the defendants and their counsel will try to refer to and/or introduce evidence that Plaintiff Kathleen Machado told her expert psychologist Dr. Sonnie Weedn that she "believed" that her ex-husband was sexually abused as a child.


The defendants will take the argument one step further. They will then attempt to insinuate that the current allegations of sexual abuse and the resulting damages are from due to sexual abuse by the biological father, not the current defendants. This argument is not based upon any facts and is mere speculation.

Clearly this evidence must be excluded as it will confuse and mislead the jury and create undue prejudice against the plaintiffs.

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Plaintiffs therefore respectfully request that this evidence, references to or arguments attempted to be made by defense counsel be excluded, including for the purposes of impeachment.

Dated: 2-15-05


GEORGE J. MACKOUL
SABBAH & MACKOUL
Attorneys for the Plaintiffs

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14 Attorneys for the Plaintiffs

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Filed FEB 15 2005
ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

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 MOTION IN LIMINE #4
TO EXCLUDE ALL EVIDENCE,
REFERENCE TO EVIDENCE AND/OR
ALL ARGUMENTS REGARDING
KATHLEEN MACHADO'S PHYSICAL
PROXIMITY AND ANY PHOTOGRAPHS
EVIDENCING THIS PROXIMITY TO
RACHEL, AMBER AND KOLLEN
LOMAS AT THE TIME OF THE
ALLEGED MOLESTATION BY FR.
ARAKAL.**

Honorable Elizabeth Humphreys
DEPT: 41
TRIAL DATE: FEBRUARY 22, 2005

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order
excluding any and all evidence, all evidence, reference to evidence and/or all arguments
regarding Kathleen Machado's physical proximity and any photographs evidencing this

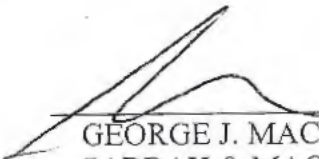
1 proximity to Rachel, Amber and Kollen Lomas at the time of the alleged molestation by Fr.

2 Arakal.

3 This motion is based upon the grounds that the proposed evidence is irrelevant to prove
4 or disprove any of the allegations stated in the complaint or any affirmative defenses stated by
5 the defendants in their answers to the complaint. Therefore the evidence should be excluded
6 under Evidence Code Section 350.

7 Further, the motion is based upon the authority of Evidence Code Section 352 that the
8 evidence sought to be excluded is more prejudicial than probative as introduction of the evidence
9 would only mislead and confuse the jury. This motion is based on the supporting Memorandum of
10 Points and Authorities, the pleadings and papers on file in this action, and upon the argument and
11 evidence as may be presented prior to or at the hearing of this matter.

12
13 Dated: 2-15-05


14 GEORGE J. MACKOUL
15 SABBAAH & MACKOUL
16 Attorneys for the Plaintiffs
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1.

3 **INTRODUCTION OF PHOTOGRAPHS AT THE TIME OF TRIAL TO PROVE THE**
4 **PROXIMITY OF THE MOTHER TO HER CHILDREN AT THE TIME OF THE**
5 **ALLEGED MOLESTATION IS IRRELEVANT.**

6 The defendants intend on introducing at the time of trial photographs of the home of the
7 plaintiffs as evidence of the physical proximity of Kathleen Machado to the location where Fr.
8 Arakal is have to alleged to have inappropriately touch her daughters Amber and Rachel. The
9 children testified that the mother was in the kitchen while the children were in the living room,
10 during the time of the alleged illegal conduct by the priest. All of the plaintiff testified that
11 Machado's view of the living room was obstructed from the kitchen and she therefore did not
12 witness the illegal acts of Fr. Arakal.

14 Defendants conducted a site inspection of the plaintiffs home taking multiple photographs of
15 its interior. Defendants will seek to introduce the photographs at the time of trial in a desperate
16 attempt to somehow prove that the mother saw the actual molestation of her children.

17 Evidence of where the mother was located at the time of the alleged illegal acts by Fr.
18 Arakal is not an affirmative defense to child molestation. Whether or not (and plaintiffs deny that
19 she did) Machado saw her children molested is not relevant to whether or not the molestations and
20 inappropriate touching ever occurred.

22 The photographs and any argument connected to this issue should therefor be excluded
23 pursuant to Evidence Code 350.

**THE INTRODUCTION OF PHOTOGRAPHS OF THE PLAINTIFFS' HOME TO
SUPPORT ARGUMENTS REGARDING THE PROXIMITY OF KATHLEEN
MACHADO TO HER CHILDREN DURING THE ALLEGED MOLESTATION
SHOULD BE EXCLUDED TO AVOID PREJUDICIAL JURY CONFUSION**

Evidence Code Section 352 states as follows: "The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (Emphasis added.)

Introduction of photographs of the home where the allegations of sexual abuse occurred do not assist the jury in determining if actual inappropriate touching occurred by Fr. Arakal.

The introduction of the photographs to support the defenses' theory that plaintiff Kathleen Machado would have/should have/or could have witnessed Amber and Rachel being inappropriately touched by Fr. Arakal will do nothing but mislead the jury. Even if the theory proves to be correct, it is no defense to sexual battery and the resulting damages to the children.

The photographs and any arguments regarding the proximity of the mother to the children at the time of the molestation is therefore more prejudicial than probative and should be excluded.


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IF THE COURT DISAGREES WITH PLAINTIFFS' ARGUMENTS CONTAINED IN THIS MOTION, THEN AT A MINIMUM THE PLAINTIFFS' REQUEST THAT THE JURY BE ALLOWED TO VISIT THE ACTUAL HOME OF THE PLAINTIFFS TO AVOID ANY CONFUSION THAT MAY BE MADE BY ADMISSION OF THE PHOTOGRAPHS.

If the court does determine that the photographs should be admitted, over the plaintiffs objection, then the plaintiffs urge the court to allow the jurors to visit the location of the home to view the interior, so as to have a fair, understanding and perception of the homes configuration.

Dated: 2-15-05


GEORGE J. MACKOUL
SABBAH & MACKOUL
Attorneys for the Plaintiffs

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14 Attorneys for the Plaintiffs

15 SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

20 vs.)

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

Case No.: CV018440
**PLAINTIFF'S MOTION IN LIMINE #5
TO EXCLUDE ALL EVIDENCE,
REFERENCE TO EVIDENCE AND/OR
ALL ARGUMENTS REGARDING
ATTORNEY MACKOUL'S ALLEGED
DISCUSSIONS WITH PLAINTIFFS
TREATING PSYCHOLOGIST DIANE
STEPHENS OUTSIDE THE PRESENCE
OF DEFENSE COUNSEL.**

Honorable Elizabeth Humphreys
DEPT: 41
TRIAL DATE: FEBRUARY 22, 2005

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:


PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order
excluding any and all evidence, reference to evidence and/or all arguments regarding attorney
MacKoul's alleged discussions with plaintiffs' treating psychologist Diane Stephens outside the
presence of defense counsel.

Filed FEB 15 2005
ROSA JUNQUEIRO, CLERK
By *Charlene Gray*
DEPUTY

1 This motion is based upon the grounds that the proposed evidence is irrelevant to prove
2 or disprove any of the allegations stated in the complaint or any affirmative defenses stated by
3 the defendants in their answers to the complaint. Therefore the evidence should be excluded
4 under Evidence Code Section 350.

5 Further, the motion is based upon the authority of Evidence Code Section 352 that the
6 evidence sought to be excluded is more prejudicial than probative as introduction of the evidence
7 would only mislead and confuse the jury. This motion is based on the supporting Memorandum of
8 Points and Authorities, the pleadings and papers on file in this action, and upon the argument and
9 evidence as may be presented prior to or at the hearing of this matter.

10
11 Dated: 2-15-05


GEORGE J. MACKOUL
SABBAH & MACKOUL
Attorneys for the Plaintiffs

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1.

3 **THE INTRODUCTION OF AND ANY ARGUMENTS REGARDING THE PROPOSED**
4 **EVIDENCE WILL DO NOTHING BUT MISLEAD THE JURY AND CREATE**
5 **PREJUDICE.**

6 Evidence Code Section 352 states as follows: "The court in its discretion may exclude
7 evidence if its probative value is substantially outweighed by the probability that its admission
8 will (a) necessitate undue consumption of time or (b) create substantial danger of undue
9 prejudice, of confusing the issues, or of misleading the jury." (Emphasis added.)
10

11 Plaintiffs' anticipate that defendant will attempt to introduce evidence and/or argument that
12 at the time of the deposition of Diane Stephens, Mr. MacKoul attempted to influence her testimony.

13 This is because during the deposition testimony, Ms. Stephens initially testified that
14 Kathleen Machado told Ms. Stephens that she knew that Rachel had been molested by Fr. Arakal in
15 September of 2001. When Mr. MacKoul examined Ms. Stephens, under oath, she questioned her
16 prior answers stating that she may not have been sure about whether or not Ms. Machado stated that
17 fact to her, asking to take a break to look at her notes. During the break, Attorney Kosina and Mr.
18 MacKoul had a heated debate in the therapist's lobby, and Mr. Kosina walked out of the therapist
19 office to talk to Mr. Coughlin. Mr. MacKoul, then went back into the therapist office and asked Ms.
20 Stephens to use her rest room facilities.
21

22 The defense will use this story to argue at trial that somehow Mr. MacKoul was trying to
23 influence the testimony of the Ms. Stephens during the break.

24 Defense counsel had every opportunity to ask Ms. Stephens those questions after the
25 deposition reconvened. The record will speak for itself.

1 Any attacks on Mr. MacKoul's perceived actions by defense counsel will do nothing but
2 create undue prejudice against the plaintiffs by false attacks on the attorney representing the
3 plaintiffs.

4 It therefore should be excluded pursuant to Evidence Code Section 352.

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7 2.


8 **INTRODUCTION OF EVIDENCE, REFERENCE TO EVIDENCE AND ARGUMENTS**
9 **BY DEFENSE COUNSEL'S INSINUATING THAT ATTORNEY MACKOUL SOMEHOW**
10 **INFLUENCED THE DEPOSITION TESTIMONY OF DIANE STEPHENS (PLAINTIFFS**
11 **TREATING THERAPIST) IS IRRELEVANT.**

12 Introduction of the proposed evidence will not prove or disprove a fact or issue presently
13 stated in any of the pleadings.

14 "How the deposition" of Ms. Stephens was conducted by counsel is not relevant to prove
15 or disprove any factual issue in this case. The transcript of the testimony will speak for itself.
16 Defense counsel had every opportunity to bring up any concerns regarding the veracity of Ms.
17 Stephens testimony during her deposition.

18 Any questioning of Ms. Stephens regarding what defense counsel "thought" Mr.
19 MacKoul said to her during the break is neither relevant nor admissible at the time of trial.

20
21
22 Dated: 2-15-05

23 
24 GEORGE J. MACKOUL
25 SABBAAH & MACKOUL
Attorneys for the Plaintiffs

1 George J. MacKoul (Bar No. 170586)
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14 Attorneys for the Plaintiffs

Filed FEB 15, 2005
ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

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 MOTION IN LIMINE #6
TO EXCLUDE ALL EVIDENCE,
REFERENCE TO EVIDENCE AND/OR
ALL ARGUEMENTS REGARDING
PLAINTIFFS CONTACT WITH AND
SUPPORT FROM VICTIM ADVOCACY
GROUPS SUCH AS S.N.A.P. (SURVIORS
NETWORK OF ABUSE BY PRIESTS)
INCLUDING BY WAY OF
IMPEACHMENT.**

Honorable Elizabeth Humphreys
DEPT: 41
TRIAL DATE: FEBRUARY 22, 2005

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:


PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order
excluding any and all evidence, all evidence, reference to evidence and/or all arguments

1 regarding plaintiffs contact with and support from victims advocacy groups such as S.N.A.P. and
2 individuals representing S.N.A.P including impeachment evidence.

3 This motion is based upon the grounds that the proposed evidence is irrelevant to prove
4 or disprove any of the allegations stated in the complaint or any affirmative defenses stated by
5 the defendants in their answers to the complaint. Therefore the evidence should be excluded
6 under Evidence Code Section 350.

7 Further, the motion is based upon the authority of Evidence Code Section 352 that the
8 evidence sought to be excluded is more prejudicial than probative as introduction of the evidence
9 would only mislead and confuse the jury. This motion is based on the supporting Memorandum of
10 Points and Authorities, the pleadings and papers on file in this action, and upon the argument and
11 evidence as may be presented prior to or at the hearing of this matter.
12

13 Dated: 2-15-05


14 GEORGE J. MACKOUL
15 SABBAAH & MACKOUL
16 Attorneys for the Plaintiffs
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1.

3 **INTRODUCTION OF EVIDENCE, REFERENCE TO EVIDENCE AND ARGUMENTS**
4 **REGARDING PLAINTIFFS CONTACT WITH VICTIM ADVOCACY GROUPS IS**
5 **IRRELEVANT.**

6 The defendants intend on introducing at the time of trial evidencing of the fact that plaintiffs
7 have contacted and discussed this case with the support organization, such as "Survivors Network
8 Abused By Priests" a.k.a. SNAP.

9 Any evidence, reference to any evidence and/or argument regarding plaintiff's contact with
10 this type or any other type of support organization (including impeachment) should therefore be
11 excluded pursuant to Evidence Code 350. This evidence does not prove any of the allegations stated
12 in the complaint nor does it prove any of the affirmative defenses stated in the defendants answers.
13

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15 2.

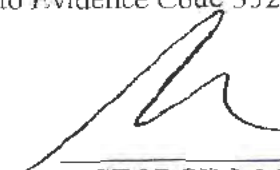
16 **THE INTRODUCTION OF EVIDENCE/REFERENCE TO EVIDENCE AND/OR**
17 **ARGUMENT REGARDING PLAINTIFFS CONTACT AND DISCUSSION WITH**
18 **SUPPORT GROUPS IS MORE PREJUDICIAL THAN PROBATIVE AND SHOULD BE**
19 **EXCLUDED TO AVOID PREJUDICIAL JURY CONFUSION**

20
21 Evidence Code Section 352 states as follows: "The court in its discretion may exclude
22 evidence if its probative value is substantially outweighed by the probability that its admission
23 will (a) necessitate undue consumption of time or (b) create substantial danger of undue
24 prejudice, of confusing the issues, or of misleading the jury." (Emphasis added.)
25

1 Introduction of evidence of contact with support groups is more prejudicial than
2 probative as the defendants will seek to mislead the jury into the nature and purpose of such
3 support groups, for the purpose of prejudicing the jury.

4 Therefore the evidence should be excluded pursuant to Evidence Code 352.

5 Dated: 2-15-05

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7 
8 GEORGE J. MACKOUL
9 SABBAAH & MACKOUL
10 Attorneys for the Plaintiffs
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Filed FEB 15 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

vs.

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

) Case No.: CV018440
) **PLAINTIFF'S MOTION IN LIMINE #7**
) **TO EXCLUDE ALL EVIDENCE,**
) **REFERENCE TO EVIDENCE AND/OR**
) **ALL ARGUMENTS REGARDING**
) **CERTAIN STATEMENTS MADE BY**
) **ANY PERSON ON THE AUDIOTAPED**
) **INTERVIEW OF KATHLEEN**
) **MACHADO AND AMBER LOMAS BY**
) **FR. RICHARD RYAN AND SISTER**
) **BARBARA, INCLUDING FOR THE**
) **PURPOSE OF CROSS EXAMINATION.**
)
)
)

Honorable Elizabeth Humphreys
DEPT: 41
TRIAL DATE: FEBRUARY 22, 2005

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order
excluding any and all evidence, reference to all evidence and/or all arguments regarding certain
statements made by any person on the audio tape interview of Kathleen Machado and Amber

1 Lomas by Fr. Richard Ryan and Sister Barbara made as part of the canonical investigation. The
2 exclusion of this evidence is also for the purpose of any cross examination by the defendants.

3 The statements and questions sought to be excluded are any reference to Ms. Machado
4 having an attorney and any questions and responses that would elicit any opinion/communication
5 or discussions with her attorney about this case. Plaintiffs also seek to have portions of the
6 transcribed interview referencing these subjects also excluded.

7 This motion is based upon the grounds that the proposed evidence is irrelevant to prove
8 or disprove any of the allegations stated in the complaint or any affirmative defenses stated by
9 the defendants in their answers to the complaint. Therefore the evidence should be excluded
10 under Evidence Code Section 350.

11 Further, the motion is based upon the authority of Evidence Code Section 352 that the
12 evidence sought to be excluded is more prejudicial than probative as introduction of the evidence
13 would only mislead and confuse the jury. This motion is based on the supporting Memorandum of
14 Points and Authorities, the pleadings and papers on file in this action, and upon the arguments and
15 evidence as may be presented prior to or at the hearing of this matter.
16

17 Dated:

2/15/05



18 GEORGE J. MACKOUL
19 SABBAAH & MACKOUL
20 Attorneys for the Plaintiffs

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1.

3 **INTRODUCTION OF EVIDENCE, REFERENCE TO OR ARGUMENTS RELATING TO**
4 **INFORMATION CONTAINED ON AN AUDIO RECORDING REGARDING**
5 **DISCUSSION BY ANY OF THE PLAINTIFFS WITH THEIR ATTORNEY AND ANY**
6 **OPINIONS EXPRESSED BY THEIR COUNSEL ARE IRRELEVANT.**
7

8 During the recorded interview between Fr. Richard Ryan, Sister Barbara, Kathleen Machado
9 and Amber Lomas discussions occurred where Ms. Machado and/or Amber were asked about their
10 attorney's opinions with regard to the merits or actions and other issues presently being litigated in
11 this lawsuit. That information is irrelevant as it does not prove or disprove any of the allegations
12 stated in the complaint or any of the affirmative defenses stated in the defendants' answers to the
13 complaint.
14

15 Therefore this information, contained on the audio recording described above and any
16 transcript taken from the recording should be excluded pursuant to Evidence Code 350.
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2 **THE INTRODUCTION OF THOSE PORTIONS OF THE AUDIO RECORDINGS**
3 **DESCRIBED ABOVE WOULD CAUSE "UNDUE" PREJUDICE AND WILL MISLEAD**
4 **THE JURY.**
5


6 Evidence Code Section 352 states as follows: "The court in its discretion may exclude
7 evidence if its probative value is substantially outweighed by the probability that its admission
8 will (a) necessitate undue consumption of time or (b) create substantial danger of undue
9 prejudice, of confusing the issues, or of misleading the jury." (Emphasis added.)
10

11 Any audio recording containing questions about lawyers and lawsuits, and their opinions
12 to the plaintiffs by the defendants would no doubt prejudice the jury against the plaintiffs as
13 being "litigious".

14 Based on these arguments, the plaintiffs request that evidence any and all evidence,
15 reference to all evidence and/or all arguments any reference to Ms. Machado having an attorney
16 and any questions and responses that would elicit any opinion/communication or discussions
17 with her attorney about this case, be excluded, including for the purpose of any cross
18 examination by the defendants.

19 Dated:

20 2/15/05

21 
22 GEORGE J. MACKOUL
23 SABBAAH & MACKOUL
24 Attorneys for the Plaintiffs
25

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14 Attorneys for the Plaintiffs

Filed FEB 15 2005
ROSA JUNQUEIRO, CLERK

B. *Charlene Gray*
DEPUTY

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 MOTION IN LIMINE #8
TO EXCLUDE ALL EVIDENCE,
REFERENCE TO EVIDENCE AND/OR
ALL ARGUMENTS REGARDING
CERTAIN STATEMENTS MADE BY
ANY PERSON ON THE VIDEOTAPE
INTERVIEW OF AMBER AND RACHEL
LOMAS BY THE STANISLAUS COUNTY
DISTRICT ATTORNEY'S OFFICE,
INCLUDING FOR THE PURPOSE OF
CROSS EXAMINATION.**

Honorable Elizabeth Humphreys
DEPT: 41
TRIAL DATE: FEBRUARY 22, 2005

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order
excluding any and all evidence, reference to all evidence and/or all arguments regarding certain
statements made by any person on the video tape interview of Rachel and Amber Lomas by an

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1.

3 **INTRODUCTION OF EVIDENCE, REFERENCE TO OR ARGUMENTS RELATING TO**
4 **INFORMATION CONTAINED IN A VIDEOTAPE RECORDING OF RACHEL AND**
5 **AMBER LOMAS REGARDING ANY DISCUSSION/OPINIONS AND/OR THEIR**
6 **RELATIONSHIP WITH THE ATTORNEY (INCULDING REFERENCE TO THEIR**
7 **MOTHERS DISCUSSION/RELATIONSHIP WITH THE ATTORNEY(S))**
8 **REPRESENTING THE PLAINTIFFS IN THIS MATTER ARE IRRELEVANT.**
9

10
11 The Stanislaus County District Attorney's office videotaped an interview between a
12 representative of the Stanislaus Child Protective Services and Amber and Rachel Lomas
13 individually. Attorney MacKoul, without being present during the interview gave detective Bali of
14 the Hughson Police department permission to interview his clients.

15 During the interview, the interviewer would ask Amber and Rachel questions such as "does
16 your mother have an attorney?" " How did your mother come to know the attorney? "When and
17 were did you meet with the attorney". The questions were being asked because at the time of the
18 interview, the police officer investigating the allegations of sexual abuse had been influenced by the
19 defendants, who sought to prejudice the investigation against the Ms. Machado and in favor of the
20 defendant.
21

22 Therefore this any reference to Mr. MacKoul, lawyers, discussion with lawyers by either of
23 the minor plaintiffs, including how and why an attorney was retained and descriptions of any
24 meetings with the attorney, contained on the videotape described above and any transcript taken
25 from the video recording should be excluded pursuant to Evidence Code 350.

1 employee from the Stanislaus County Child Protective Services. The exclusion of this evidence
2 is also for the purpose of any cross examination by the defendants and is requested to include
3 any introduction of any written transcription of the videotaped interview for the purpose of either
4 direct or cross examination by the defendants.

5 The statements and questions sought to be excluded are any reference to Ms. Machado
6 having an attorney and any questions and responses that would elicit any opinion/communication
7 or discussions regarding what either of the minors knew about their "mother's" attorney
8 including but not limited how Ms. Machado found the attorney. Also included in the order
9 should be any discussions on the videotape regarding any meetings Rachel and Amber had with
10 their attorney, including the place where the meeting was held and the substance of the
11 discussions thereto.

12
13 This motion is based upon the grounds that the proposed evidence is irrelevant to prove
14 or disprove any of the allegations stated in the complaint or any affirmative defenses stated by
15 the defendants in their answers to the complaint. Therefore the evidence should be excluded
16 under Evidence Code Section 350.

17 Further, the motion is based upon the authority of Evidence Code Section 352 that the
18 evidence sought to be excluded is more prejudicial than probative as introduction of the evidence
19 would only mislead and confuse the jury. This motion is based on the supporting Memorandum of
20 Points and Authorities, the pleadings and papers on file in this action, and upon the arguments and
21 evidence as may be presented prior to or at the hearing of this matter.

22
23 Dated:

24 _____
25 GEORGE J. MACKOUL
SABBAH & MACKOUL
Attorneys for the Plaintiffs

Motion to Amend

George J. MacKoul (Bar No. 170586)
SABBAH AND MACKOUL
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Falmouth, Mass 02540
Phone: 508-495-4955
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San Jose, California 95113-1210
Phone: 408-286-5150
Fax: 408-286-5170

Attorneys for the Plaintiffs

cy
Filed FEB 15 2005
ROSA JUNQUEIRO, CLERK
By Charlene [Signature]
DEPUTY

SUPERIOR COURT IN AND FOR THE COUNTY OF SAN JOAQUIN

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

vs.

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

) Case No.: CV018440
) **PLAINTIFFS' MOTION IN LIMINE #9**
) **TO ALLOW THE FIRST AMENDED**
) **COMPLAINT TO BE FILED AGAINST**
) **THE DEFENDANTS WHICH**
) **CONFORMS TO THE DISCOVERED**
) **FACTS TO DATE.**

Honorable Elizabeth Humphreys
DEPT: 41
TRIAL DATE: FEBRUARY 22, 2005

TO: ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT plaintiff hereby moves this Court for an order allowing
Plaintiffs First Amended Complaint to be filed.

This motion is based upon the grounds that the amended complaint does not add any new
causes of action or parties, but only clarifies the factual issues alleged to conform to the

1 discovery to date, re-alleges punitive damages, and further prays for future medical expenses for
2 the plaintiffs. The amended complaint also correctly names/identifies defendant The Diocese of
3 Stockton as "The Roman Catholic Bishop of Stockton, a corporation sole". This motion is based
4 on the supporting Memorandum of Points and Authorities, the pleadings and papers on file in this
5 action, and upon the argument and evidence as may be presented prior to or at the hearing of this
6 matter.

7
8 Dated: 2/15/05



GEORGE J. MACKOUL
SABBAH & MACKOUL
Attorneys for the Plaintiffs

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 1.

3 **AMENDMENTS TO THE COMPLAINT TO CONFORM TO PROOF ARE LIBERALLY**
4 **ALLOWED IN THIS STATE, ESPECIALLY WHERE THE AMENDMENTS DO NOT**
5 **ADD ADDITIONAL PARTIES OR NEW CAUSES OF ACTION.**

6 The trial judge has discretion to permit amendment of the pleadings before, even at or after
7 the trial. Leave to amend is frequently granted to conform to proof offered at trial; i.e., where the
8 evidence is technically outside the issues framed by the original pleadings and facts discovered just
9 before trial. In such cases, the trial judge may order the pleadings amended to conform to the proof.

10 *Ca Civ Pro* §§ 473(a)(1), 576

11 The court may consider the following factors considered in allowing the amendments:

- 12
- 13 • whether there is a reasonable excuse for the delay;
 - 14 • whether the change relates to the facts or only legal theories; and
 - 15 • whether the opposing party will be prejudiced by the amendment. See, City of Stanton v. Cox
16 (1989) 207 Cal.App.3d 1557, 1563, 255 Cal.Rptr. 682, 685.

17 The plaintiffs had a reasonable excuse for delay, as the defendants, allowed the completion
18 of key witnesses, Bishop Steven Blaire, and his attested to alter ego, Fr. Richard Ryan to be
19 completed, just last week, on February 9 and 10 of 2005.

20 The plaintiffs have not added any new parties and/or new causes of action to the First
21 Amended Complaint, and have simply, clarified the facts to conform to the discovered facts to date.

22 The amended complaint also correctly names/identifies defendant The Diocese of Stockton
23 as "The Roman Catholic Bishop of Stockton, a corporation sole".
24

1 The amended complaint only requests compensation for medical care for the plaintiffs'
2 future psychological damages. These damages were spelled out in the report of plaintiffs' expert Dr.
3 Sonnie Weedn which was given to the defendants months ago during expert disclosure. The
4 complaint re-asserts punitive damages, against all defendants as did the original complaint. Punitive
5 damages against The Bishop of Stockton, a.k.a. the Diocese of Stockton were stipulated at one time
6 to be removed from the original complaint, pursuant Ca Civ Pro Section 436 (a).

7
8 Based on the forgoing, the defendants and each of them have not been prejudiced by the
9 amended complaint as no new issues are being raised that would cause surprise or further discovery.

10 Plaintiffs therefore urge the court to accept the amended complaint for filing, the original
11 which is attached to this motion.

12
13 Dated: 2/15/05



14 GEORGE J. MACKOUL
15 SABBAAH & MACKOUL
16 Attorneys for the Plaintiffs

SHORT TITLE: Machado et. al v. Illo et. al.	CASE NUMBER:
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4. Plaintiff (name):
is doing business under the fictitious name (specify):

and has complied with the fictitious business name laws.

5. Each defendant named above is a natural person
a. except defendant (name): ee 5 in Addendum
(1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):

(4) a public entity (describe):

(5) other (specify):

c. except defendant (name):
(1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):

(4) a public entity (describe):

(5) other (specify):

b. except defendant (name):
(1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):

(4) a public entity (describe):

(5) other (specify):

d. except defendant (name):
(1) a business organization, form unknown
(2) a corporation
(3) an unincorporated entity (describe):

(4) a public entity (describe):

(5) other (specify):

Information about additional defendants who are not natural persons is contained in Complaint—Attachment 5.

6. The true names and capacities of defendants sued as Does are unknown to plaintiff.

7. Defendants who are joined pursuant to Code of Civil Procedure section 382 are (names):

8. This court is the proper court because

- a. at least one defendant now resides in its jurisdictional area.
- b. the principal place of business of a defendant corporation or unincorporated association is in its jurisdictional area.
- c. injury to person or damage to personal property occurred in its jurisdictional area.
- d. other (specify):

9. Plaintiff is required to comply with a claims statute, and
a. plaintiff has complied with applicable claims statutes, or
b. plaintiff is excused from complying because (specify):

(Continued on page three)

SHORT TITLE:

CASE NUMBER:

10. The following causes of action are attached and the statements above apply to each (each complaint must have one or more causes of action attached):

- a. Motor Vehicle
- b. General Negligence
- c. Intentional Tort
- d. Products Liability
- e. Premises Liability
- f. Other (specify):

Battery, Sexual Battery, Negligence, Intentional Infliction of Emotional Distress (as to Plaintiffs Rachel and Amber Lomas), Intentional Infliction of Emotional Distress (as to Plaintiff Kathleen Machado), Slander, Libel, Civil Conspiracy.

11. Plaintiff has suffered

- a. wage loss
- b. loss of use of property
- c. hospital and medical expenses
- d. general damage
- e. property damage
- f. loss of earning capacity
- g. other damage (specify):

Punitive Damages pursuant to C.C.P. Section 3294 and C.C.P. 1708.5, Emotional Distress Damages, General Damages and Prejudgment Interest

12. The damages claimed for wrongful death and the relationships of plaintiff to the deceased are

- a. listed in Complaint—Attachment 12.
- b. as follows:

13. The relief sought in this complaint is within the jurisdiction of this court.

14. PLAINTIFF PRAYS for judgment for costs of suit; for such relief as is fair, just, and equitable; and for

- a. compensatory damages
 - (1) (unlimited civil cases) according to proof.
 - (2) (limited civil cases) in the amount of: \$
- b. other (specify):

Punitive Damages Pursuant to C.C.P. Section 3294, and C.C.P. Section 1708.5, Emotional Distress Damages, General Damages and Prejudgment Interest.

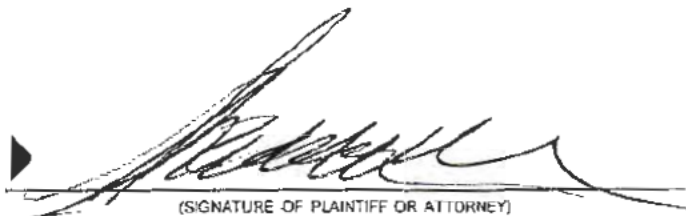
15. The paragraphs of this complaint alleged on information and belief are as follows (specify paragraph numbers):

Paragraphs 1-41 of Causes of Actions No. 1-8.

Date: February 15, 2005

George J. MacKoul Esq.

(TYPE OR PRINT NAME)



(SIGNATURE OF PLAINTIFF OR ATTORNEY)

Attachments

1. Fr. Joseph Illo, Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, Fr. Richard Ryan, Bishop Steven Blaire and The Roman Catholic Bishop of Stockton, a corporation sole a.k.a. The Diocese of Stockton
2. Battery, Sexual Battery, Negligence Per Se, Intentional Infliction of Emotional Distress (as to Plaintiffs Rachel and Amber Lomas), Intentional Infliction of Emotional Distress (as to Plaintiff Kathleen Machado), Slander, Libel, False Light, Civil Conspiracy
3. Compensatory Damages, Punitive Damages, Emotional Distress Damages, General Damages for pain suffering and humiliation, Future Emotional Damages, Future Psychological Treatment and Care, Prejudgment Interest.
4. Fr. Joseph Illo, Francis Joseph a.k.a. Fr. Francis Arakal, Fr. Richard Ryan, Bishop Steven Blaire and the Diocese of Stockton.
5.
 - a. X
 - b. The Roman Catholic Bishop of Stockton
 - c.
 - d.
 - e.
 - f.
 - g.
 - h.
 - i. X
 - j. A Corporation Sole

SHORT TITLE: Machado et. al. v. Illo et. al.	CASE NUMBER:
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ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

IT-1. Plaintiff (name): Rachel Lomas and Amber Lomas

alleges that defendant (name):

Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr. Francis Arakal, Fr. Richard Ryan, Bishop Steven Blaire, and The Roman Catholic Bishop of Stockton a.k.a. Diocese of Stockton

Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): July 25, 2001

at (place): 1816 7th Street Hughson, California

(description of reasons for liability):

CAUSE OF ACTION NO. 1: CIVIL BATTERY

1. Defendant Fr. Francis Joseph a.k.a. Fr. Francis Arakal, intentionally made harmful and offensive contact, without consent, to the breasts of Plaintiff Rachel Lomas, a minor and at the time of the incident was 13 years of age. The Defendant's unwanted sexual touching caused Plaintiff Rachel Lomas to suffer physical pain by way of humiliation, anxiety and sleeplessness.
2. Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, intentionally made harmful and offensive contact, without consent, to the breasts and pelvic/groin areas of Plaintiff Amber Lomas, a minor and at the time of the incident was 11 years of age. The Defendant's unwanted sexual touching caused Plaintiff Rachel Lomas to suffer physical pain by way of humiliation, anxiety and sleeplessness.
3. Defendant, The Roman Catholic Bishop of Stockton, a.k.a. The Diocese of Stockton is vicariously liable for the acts of Defendant Fr. Francis Joseph, a.k.a., Fr. Francis Arakal, an employee of the Roman Catholic Bishop of Stockton a.k.a. Diocese of Stockton, as the Roman Catholic Bishop of Stockton, knew or should have known and had notice of and/or ratified Defendant Fr. Francis Josephs, a.k.a. Fr. Francis Arakal's offensive/harmful behavior/tendencies.
4. Defendants Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and Does 1-100 are also vicariously liable as each of them, supervised, directed, managed and controlled Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, and knew or should have known and did know and/or ratified the acts of Defendant Francis Arakal a.k.a. Fr. Francis Josephs' offensive/harmful behavior.
5. Plaintiffs pray for the following damages as to each and every defendant as to this cause of action:
 - A. Compensatory damages pursuant to California Civil Code Section 3281.
 - B. Punitive damages pursuant to California Civil Code Section 3294.
 - C. General Damages, for pain and suffering
 - D. Prejudgment Interest.

SHORT TITLE: Machado et. al. v. Illo et. al.	CASE NUMBER:
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1 CAUSE OF ACTION—Intentional Tort Page 5
(number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

IT-1. Plaintiff (name): Rachel Lomas and Amber Lomas

alleges that defendant (name):

Fr. Joseph Illo, Fr. Francis Joseph a.k.a. Fr. Francis Arakal, Fr. Richard Ryan, Bishop Steven Blaire, and The Roman Catholic Bishops of Stockton a.k.a. Diocese of Stockton

Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): July 25, 2001

at (place): 1816 7th Street Hughson, California

(description of reasons for liability):

CAUSE OF ACTION NO. 1: CIVIL BATTERY

1. Defendant Fr. Francis Joseph a.k.a. Fr. Francis Arakal, intentionally made harmful and offensive contact, without consent, to the breasts of Plaintiff Rachel Lomas, a minor and at the time of the incident was 13 years of age. The Defendant's unwanted sexual touching caused Plaintiff Rachel Lomas to suffer physical pain by way of humiliation, anxiety and sleeplessness.

2. Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, intentionally made harmful and offensive contact, without consent, to the breasts and pelvic/groin areas of Plaintiff Amber Lomas, a minor and at the time of the incident was 11 years of age. The Defendant's unwanted sexual touching caused Plaintiff Rachel Lomas to suffer physical pain by way of humiliation, anxiety and sleeplessness.

3. Defendant Diocese of Stockton is vicariously liable for the acts of Defendant Fr. Francis Joseph, a.k.a., Fr. Francis Arakal, an employee of the Roman Catholic Bishops of Stockton a.k.a. Diocese of Stockton, as the Roman Catholic Bishops of Stockton, knew or should have known and had notice of and/or ratified Defendant Fr. Francis Josephs, a.k.a. Fr. Francis Arakal's offensive/harmful behavior/tendencies.

4. Defendants Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and Does 1-100 are also vicariously liable as each of them, supervised, directed, managed and controlled Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, and knew or should have known and did know and/or ratified the acts of Defendant Francis Arakal a.k.a. Fr. Francis Josephs' offensive/harmful behavior.

5. Plaintiffs pray for the following damages as to each and every defendant as to this cause of action:

- A. Compensatory damages pursuant to California Civil Code Section 3281.
- B. Punitive damages pursuant to California Civil Code Section 3294.
- C. General Damages, for pain and suffering
- D. Prejudgment Interest.

SHORT TITLE:

CASE NUMBER:

Machado et. al. v. Iilo et. al

2

CAUSE OF ACTION—Intentional Tort

Page 6

(number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

IT-1. Plaintiff (name): Rachel Lomas and Amber Lomas

alleges that defendant (name):

Fr. Joseph Iilo, Fr. Francis Joseph, a.k.a., Fr. Francis Arakal, a.k.a. Fr. Richard Ryan, Bishop Steven Blaire, and The Roman Catholic Bishop of Stockton a.k.a. Diocese of Stockton.

Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff

on (date): July 25, 2001

at (place): 1816 7th Street Hughson, California 95326

(description of reasons for liability):

CAUSE OF ACTION No. 2: SEXUAL BATTERY (C.C.P. 1708.5)

6. Plaintiffs reallege and incorporate by reference paragraphs 1 thru 5 of plaintiffs' First Cause of Action as though fully set forth herein.

7. Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, intentionally made harmful and offensive contact ,without consent and with the intimate body parts of Plaintiff, Rachel Lomas, a minor. Further, defendant, Fr. Francis Joseph, a.k.a. Fr. Francis Arakal caused immediate apprehension of sexually offensive contact with the intimate body parts of Plaintiff, Rachel Lomas and a sexually offensive contact did result with Plaintiff Rachel Lomas, directly and indirectly. The Defendant's unwanted and sexually offensive contact and/or apprehension of sexually offensive contact caused Plaintiff Rachel Lomas to suffer harmful and offensive contact.

8. Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, intentionally made harmful and offensive contact ,without consent and with the intimate body parts of Plaintiff, Amber Lomas, a minor. Further defendant, Fr. Francis Arakal, a.k.a. Fr. Francis Joseph, caused immediate apprehension of sexually offensive contact with the intimate body parts of Plaintiff, Amber Lomas and a sexually offensive contact did result with Plaintiff Amber Lomas, directly and indirectly. The Defendant's unwanted and sexually offensive contact and/or apprehension of sexually offensive contact caused Plaintiff Amber Lomas to suffer harmful and offensive contact.

9. Defendant, The Roman Catholic Bishop of Stockton, a.k.a. The Diocese of Stockton is vicariously liable for the acts of Defendant Fr. Francis Joseph a.k.a. Fr. Francis Arakal as the Defendant, The Roman Catholic Bishop of Stockton a.k.a. the Diocese of Stockton, and as the employer of Defendant Fr. Francis Joseph a.k.a. Fr. Francis Arakal, knew or should have know and/or ratified the conduct of Defendant Francis Joseph a.k.a. Fr. Francis Arakal's offensive/harmful sexual behavior towards minors.

10. Defendants Fr. Joseph Iilo, Fr. Richard Ryan and Bishop Steven Blaire and Does 1-100 are also vicariously liable as each of them, supervised, controlled, directed and knew or should have know of and/or ratified Defendant Francis Arakal a.k.a. Fr. Francis Josephs' offensive/harmful behavior sexual behavior towards minors.

11. Plaintiffs pray for the following damages, according to proof at trial, as to each and every defendant as to this cause of action:

- A. General Damages pursuant to C.C.P. Section 1708.5;
- B. Special Damages pursuant to C.C.P. Section 1708.5;
- C. Punitive Damages pursuant to C.C.P. Section 1708.5 and C.C.P. Section 3294 and
- D. Prejudgment Interest.

SHORT TITLE:

Machado et. al. v. Illo et. al

CASE NUMBER:

3

(number)

CAUSE OF ACTION—General Negligence

Page 7

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

GN-1. Plaintiff (name): Rachel Lomas and Amber Lomas

alleges that defendant (name): Fr. Joseph Illo, Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, Fr. Richard Ryan, Bishop Steven Blaire, and The Roman Catholic Bishop of Stockton, a.k.a. The Diocese of Stockton

Does 1 to 100

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant negligently caused the damage to plaintiff

on (date): July 25, 2001

at (place): 1816 7th Street Hughson, CA

(description of reasons for liability):

See Attachment GN-1

Attachments

1 Attachment GN-1

2 CAUSE OF ACTION NO.3: NEGLIGENCE PER SE

3 12. Plaintiffs reallege and incorporate by reference paragraphs 1 thru 5 of plaintiffs' First
4 Cause of Action and paragraphs 7 thru 11 as though fully set forth herein.

5 13. Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal was and still is a priest in the
6 employ of the Diocese, a.k.a. defendant The Roman Catholic Bishop of Stockton, and as
7 such has and did have a fiduciary duty of trust/care/as a person in a place of religious
8 authority to avoid sexual misconduct with Plaintiffs Rachel and Amber Lomas, minors who
9 through their religious, social, spiritual and cultural beliefs were taught, by each and every
10 named defendant, directly, indirectly, through formal and informal religious education and
11 further plaintiffs and each of them did believe that Catholic Priests were the apostolic
12 representatives of Jesus Christ, God himself.

13 14. Defendant Fr. Francis Joseph, a.k.a. Fr. Arakal breach his fiduciary duty and was the
14 factual and proximate cause of harm to Plaintiffs Rachel and Amber Lomas and is
15 therefore, negligent and negligent per se for the acts perpetrated upon Plaintiff Rachel
16 Lomas and Amber Lomas, pursuant to the following statutes:

- 17 a. Criminal Sexual Battery, California Penal Code Section 243.4;
18 b. Criminal Battery, California Penal Code Section 243;
19 c. Unlawful Seduction, California Penal Code Section 261.5;
20 d. Sexual Abuse of a Minor, California Penal Code Section 288a(b)(1).

21 15. Defendants, Fr. Joseph Illo, Fr. Richard Ryan and Bishop Steven Blaire, supported and
22 also taught/recommended/educated/advised the doctrine of religious authority and the
23 perceptions adopted in paragraph 13 above by the minor plaintiffs and their mother and
24 were the direct supervisors of the Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal,
and supervised, directed, controlled and were acting as a principal/agent/alter ego of each
and every other named defendant, had knowledge of the unfitness of the employee and did
employ/negligently hire, train and ordain and continue to employ with a conscious
disregard of the rights or safety of others, in contradiction to the internal policies and
procedures of The Roman Catholic Bishop of Stockton, a.k.a. The Diocese of Stockton,
The Dallas Charter subscribed to by Bishop Steven Blaire and the Roman Catholic Bishop
of Stockton and further authorized or ratified the conduct of Defendant Fr. Francis Joseph
a.k.a. Fr. Francis Arakal's unlawful, illegal and sexually misconduct by failing to conduct a
proper background check of Fr. Arakal in his native origin of India, both before, during and

Attachments

1 after they allegations of sexual misconduct cited in this complaint and had a further duty to
2 warn, deter, prevent and protect others (especially minors) from Fr. Francis Joseph, a.k.a.
3 Fr. Francis Arakal's illegal behavior. The Defendants and each of them named in this
4 paragraph breach their duty to warn, prevent and protect and/or take reasonable steps to
5 protect the minor Plaintiffs, Amber Lomas and Rachel Lomas from the illegal misconduct
6 of Fr. Francis Joseph, a.k.a. Fr. Francis Arakal. As a result of the breach of duty by each of
7 the Defendants named in this paragraph Defendants factually and proximately caused harm
8 to the Plaintiffs and therefore each Defendant named in this paragraph is negligent and
9 negligent per se, pursuant to the statutes listed in paragraph 14 a.-d. above.

10
11 16. Defendant The Roman Catholic Bishop of Stockton, a.k.a. The Diocese of Stockton as
12 the employer of Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, and supported and
13 also taught/recommended/educated/advised the doctrine of religious authority and the
14 perceptions adopted in paragraph 13 above by the minor plaintiffs and their mother and
15 were the direct supervisors of the Defendant Fr. Francis Joseph, a.k.a. Fr. Francis Arakal,
16 and supervised, directed, controlled and were acting as a principal/agent/alter ego of each
17 and every other named defendant, had knowlege of the unfitness of the employec and did
18 employ/negligently hire, train and ordain and continue to employ with a conscious
19 disregard of the rights or safety of others, in contradiction to the internal policies and
20 procedures of the The Roman Catholic Bishop of Stocton, a.k.a. The Diocese of Stockton,
21 The Dallas Charter subscribed to by Bishop Steven Blaire and The Roman Catholic Bishop
22 of Stockton and further authorized or ratified the conduct of Defendant Fr. Francis Joseph
23 a.k.a.Fr. Francis Arakal's unlawful, illegal and sexually misconduct by failing to conduct a
24 proper background check of Fr. Arakal in his native origin of India, both before, during and
after they allegations of sexual misconduct cited in this complaint and had a further duty to
warn, deter, prevent and protect others (especially minors) from Fr. Francis Joseph, a.k.a.
Fr. Francis Arakal's illegal behavior. The Defendants and each of them named in this
paragraph breach their duty to warn, prevent and protect and/or take reasonable steps to
protect the minor Plaintiffs, Amber Lomas and Rachel Lomas from the illegal misconduct
of Fr. Francis Joseph, a.k.a. Fr. Francis Arakal. As a result of the breach of duty by each of
the Defendants named in this paragraph Defendants factually and proximately caused harm
to the Plaintiffs and therefore each Defendant named in this paragraph is negligent and
negligent per se, pursuant to the statutes listed in paragraph 14 a.-d. above.

17. Plaintiffs and each of them pray for the following damages according to proof at trial:

- A. Compensatory Damages pursuant to Civil Code Section 3333;
- B. Punitive Damage pursuant to Civil Code Section 3294, as the acts of the Defendants and each of them were done with Malice, Oppression and/or Fraud and did constitute Dispicable Conduct.
- C. General Damages for pain, suffering humiliation.

Attachments

1 D. Future Psychological care and expense.
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SHORT TITLE:

Machado et. al. v. Illo et. al.

CASE NUMBER:

4

CAUSE OF ACTION—Intentional Tort

Page 9

(number)

ATTACHMENT TO Complaint Cross-Complaint

(Use a separate cause of action form for each cause of action.)

IT-1. Plaintiff *(name)*: Rachel Lomas and Amber Lomas

alleges that defendant *(name)*:

Fr. Joseph Illo, Fr. Francis Joseph, a.k.a. Fr. Francis Arakal, Fr. Richard Ryan, Bishop Steven Blaire, and The Roman Catholic Bishop of Stockton a.k.a. The Diocese of Stockton

Does 1 to 100.

was the legal (proximate) cause of damages to plaintiff. By the following acts or omissions to act, defendant intentionally caused the damage to plaintiff
on *(date)*: July 25, 2001 and September 11, 2001
at *(place)*: 1816 7th Street Hughson, California

(description of reasons for liability):

See Attachment IT-1

Attachments

Attachment IT-1

CAUSE OF ACTION NO. 4- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

18. Plaintiffs reallege and incorporates by reference paragraphs 1 thru 5 of plaintiffs' First Cause of Action and paragraphs 7 thru 11 of Plaintiffs' Second Cause of Action and further paragraphs 13 thru 17 of Plaintiffs' Third Cause of Action, as though fully set forth herein.

19. As a result of Defendant Fr. Francis Joseph a.k.a. Fr. Francis Arakal outrageous conduct of sexual battery on Plaintiffs Rachel and Amber Lomas, which intended to cause or with the reckless disregard of the probability of causing, severe emotional distress and has factually and proximately caused Plaintiffs Rachel and Amber Lomas to suffer serious emotional distress.

20. Defendant, The Roman Catholic Bishop of Stockton, a.k.a. The Diocese of Stockton as the employer of Fr. Francis Joseph a.k.a. Fr. Francis Arakal is vicariously liable for the outrageous acts of Fr. Francis Joseph a.k.a. Fr. Francis Arakal and the resulting emotional distress caused to Plaintiffs and each of them as Defendant, The Roman Catholic Bishop of Stockton, a.k.a. The Diocese of Stockton failed to warn/prevent/protect minors from Defendant Fr. Francis Joseph a.k.a. Fr. Francis Arakal from committing the tortous acts upon plaintiffs. The defendant named in this paragraph also ratified the conduct of each and every named defendant.

21. Defendants, Fr. Joseph Illo, Fr. Richard Ryan and Bishop Steven Blaire are also vicariously liable for the outrageous acts of Fr. Francis Joseph a.k.a. Fr. Francis Arakal and the resulting emotional distress caused to Plaintiffs and each Defendant named in this paragraph failed to warn/prevent/protect minors from Defendant Fr. Francis Joseph a.k.a. Fr. Francis Arakal from committing the tortous acts upon plaintiffs. The defendants identified in this paragraph also ratified the conduct of each and every other defendant named in this complaint.

22. Further, on September 11, 2001, Plaintiff Amber Lomas attempted to report the sexual misconduct, in the confines of the confessional/in confidence to Defendant Joseph Illo about the acts committed upon her and her sister Rachel Lomas by Defendant Fr. Francis Joseph a.k.a. Fr. Francis Arakal. At that time, Defendant Fr. Joseph Illo, the immediate supervisor to Defendant, Fr. Francis Joseph a.k.a. Fr. Francis Arakal as the pastor of St. Josephs Church in Modesto where both priests resided.. After the confidential report was made to Defendant Fr. Joseph Illo, he violated the confidences of Plaintiff Amber Lomas, and caused an immediate personal confrontation between Fr. Francis Joseph a.k.a. Fr. Francis Arakal and Plaintiff Amber Lomas. During the confrontation, Defendant Fr. Francis Joseph and Defendant, Fr. Joseph Illo began to yell, berate and intimidate Plaintiff Amber

Attachments

1 Lomas (age 11), calling Plaintiff Plaintiff Amber Lomas a "liar". Further, Defendant Fr.
2 Joseph Illo at one point denied any friendship, care and/or fiduciary duty to Plaintiff Amber
3 Lomas, and further stated "All your mother (Plaintiff Kathleen Machado) wants to do is
4 have sex with me". Defendants Illo and Arakal knew of the susceptibility of Amber Lomas,
5 Age 11, to the authority of the priesthood and therefore abused their powers as priests by
6 yelling, commanding, manipulating and uttering false and disparaging and defamatory
7 statements to Defendant Amber Lomas regarding her report of sexual misconduct to each
8 of them.

9
10 23. As a result of the outrageous conduct of Defendant Fr. Joseph Illo and Defendant Fr.
11 Francis Joseph, a.k.a. Fr. Francis Arakal which said conduct stated in paragraph 22,
12 intended to cause or with the reckless disregard of the probability of causing, emotional
13 distress, directed at Plaintiff Amber Lomas, has factually and proximately caused Plaintiff
14 Amber Lomas to suffer serious emotional distress.

15
16 24. Defendants, Fr. Richard Ryan, Bishop Steven Blaire and The Roman Catholic Bishop
17 of Stockton, a.k.a. The Diocese of Stockton, employ, direct, supervise, control and had
18 knowledge of/ further ratified/condoned/ and/or notice and are the principal and agent of Fr.
19 Joseph Illo and Fr. Joseph Francis' outrageous conduct, stated in paragraph 23, and are
20 vicariously liable for the acts of Defendants Illo and Francis.

21
22 25. Plaintiffs Amber and Rachel Lomas and each of them pray for Compensatory Damages
23 (Civil Code Section 3333) and Punitive Damages pursuant to C.C.P. Section 3294,
24 Emotional Distress Damages, General Damages and Future Psychological Treatment,
against all named defendants.