

FILE ANY ADDITIONAL
DOCUMENTS IN
FILE # 7

THIS FILE FOLDER CONTAINS DOCUMENTS DATED:

2-22-05 TO 3-14-05

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/14/05 10:00 AM 41 met at Stockton, California

Hon. Elizabeth Humphreys

Date Dept Judge

CV018440 KATHLEEN MACHADO ET AL
VS
FR. JOSEPH ILLO ET AL

Clerk: Charlene Gray
Reporter/Tape: Abby Smith
Bailiff: CA - N. Moua
Interpreter:

- [PLTF] Kathleen Machado
-
- [DEFT] Joseph Illo
-
- [DEFT] Francis Joseph AKA Joseph Arakal
- [DEFT] Richard Ryan

- ANTHONY BOSKOVICH
- GEORGE J MACKOUL
- VLADIMIR F KOZINA
- PAUL BALESTRACCI
- MICHAEL D COUGHLAN
- PAUL BALESTRACCI

Nature of proceedings: Jury trial;

- Hearing held
- Matter is continued to _____ in Dept. _____ due to _____
- Dropped Granted Denied

No parties or jurors are present.

The Court gives further rulings regarding the sworn testimony of Richard Sipe on March 11, 2005 pursuant E. C. 402.

Mr. Sipe will be limited to testify before the jury only to the opinions given during his deposition. He can testify based on his training and experience regarding the structure of the Catholic Church and regarding the definition of the concept of grooming. Mr. Sipe can answer hypothetical questions regarding grooming if the questions contain facts currently stated in the record or supported by the record. Mr. Sipe is not allowed to give any testimony regarding any party's credibility.

The Trial will resume March 15, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

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Roman Catholic Bishop of Stockton, a corporation sole, St. Joseph's Church

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Filed MAR 14 2005
ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

**KATHLEEN MACHADO INDIVIDUALLY AND AS
GUARDIAN AD LITEM FOR RACHEL LOMAS AND
AMBER LOMAS**

No. CV 018440

Plaintiff,

**FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
BISHOP STEVEN BLAIRE, AND
ROMAN CATHOLIC BISHOP OF STOCKTON, A
CORPORATION SOLE' S SUPPLEMENTAL
POINTS AND AUTHORITIES TO
EXCLUDE TESTIMONY OF SIPES**

vs.

**FR. JOSEPH ILLO, FR. FRANCIS JOSEPH, A.K.A.
FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,
BISHOP STEVEN BLAIRE, AND THE DIOCESE OF
STOCKTON , ET AL,**

**DATE: FEBRUARY 22, 2005
TIME: 1:30 PM
DEPT: 41**

Defendants.

COURT SHOULD ONLY CONSIDER OPINIONS OFFERED AT DEPOSITION

One of the essential purposes of the Code of Civil Procedure § 2034 is to permit opposing counsel to obtain discovery of opinions that will be offered at trial. In the case of *Jones v. Moore* (2000) 80 Cal.App.4th 557, the issue of limiting the opinions of an expert to those offered at deposition was addressed. In that case, although there had been an expert declaration, the expert had been asked, as here, to provide all of the opinions the expert intended to offer at trial. He did so, and also indicated, should he have any additional opinions, he would make sure opposing counsel were notified so

1 additional discovery could be undertaken. *Jones v Moore*, supra, at 561-562. This also occurred in this
2 matter with Mr. Sipes.

3 The court is requested to review Exhibit A, outtakes from the deposition of A.W. Sipes for
4 purposes of assisting in making its determinatinon. It is clear that his trial opinions were requested
5 numerous times.

6 Mr. Sipes went on to set forth exactly what his opinion was going to be and, like the *Jones v*
7 *Moore*, supra, case, indicated he would notify counsel if he were to have any new opinions prior to
8 trial. In this regard, the expert declaration, no matter how broad, is not controlling, rather the specific
9 opinions offered in deposition are. As the court in *Jones v Moore*, supra pointed out at 565-566:

10 "[1] While plaintiff's expert witness declaration regarding Oyler arguably was
11 broad enough to encompass his testifying regarding ways in which defendant
12 breached the standard of care after the further judgment was entered, *in his*
13 *deposition he testified as to certain specific opinions, said those were his only*
14 *opinions, and if he had others he would notify defense counsel. Under these*
15 *circumstances, exclusion of testimony going beyond [80 Cal.App.4th 565] the*
16 *opinions he expressed during his deposition was justified. The purpose of section*
17 *2034 is to permit parties to adequately prepare to meet the opposing expert*
18 *opinions that will be offered at trial. " [T]he need for pretrial discovery is greater*
19 *with respect to expert witnesses than it is for ordinary fact witnesses [because]*
20 *[¶] ... the other parties must prepare to cope with witnesses possessed of*
21 *specialized knowledge in some scientific or technical field. They must gear up to*
22 *cross-examine them effectively, and they must marshal the evidence to rebut their*
23 *opinions.' (1 Hogan & Weber, Cal. Civil Discovery (1997) Expert Witness*
24 *Disclosure, § 10.1, p. 525.)" (Bonds v. Roy (1999) 20 Cal.4th 140 , 147 [83*
25 *Cal.Rptr.2d 289, 973 P.2d 66].) When an expert deponent testifies as to specific*
26 *opinions and affirmatively states those are the only opinions he intends to offer at*
27 *trial, it would be grossly unfair and prejudicial to permit the expert to offer*
28 *additional opinions at trial." (Emphasis Added)*

It is submitted that the issue of exactly what Mr. Sipes opinion testimony should be limited to
in the consideration of this motion is on all fours with the above in this case. That is to say, just the
opinions he expressed at deposition.

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EXPERT OPINION NOT PROPERLY FOUNDED SHOULD BE EXCLUDED.

In the recent case of *Lockheed Litigation Cases* (2004) 115 Cal.App.4th 558, the court took up the issue as to whether or not the trial court erred in excluding expert opinion in a declaration opposing a request for summary judgment. In concluding that expert opinion must have a reasonable basis, the court set forth the following at 562-565:

"[3] An expert opinion may be based on inadmissible matter provided that the matter provides a reasonable basis for the opinion. (Evid. Code, § 801, subd. (b); *People v. Gardeley* (1996) 14 Cal.4th 605 , 618; *Pacific Gas & Electric Co. v. Zuckerman* (1987) 189 Cal.App.3d 1113 , 1135-1136.) Evidence Code section 801 states, "If a witness is testifying as an expert, his testimony in the form of an opinion is limited to such an opinion as is: [¶] . . . [¶] (b) Based on matter (including his special knowledge, skill, experience, training, and education) perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that *reasonably may be relied upon by an expert in forming an opinion upon the subject to which his testimony relates* , unless an expert is precluded by law from using such matter as a basis for his opinion." (Italics added.)

"The value of opinion evidence rests not in the conclusion reached but in the factors considered and the reasoning employed. [Citations.] Where an expert bases his conclusion upon assumptions which are not supported by the record, upon matters which are not reasonably relied upon by other experts, or upon factors which are speculative, remote or conjectural, then his conclusion has no evidentiary value." (*Pacific Gas & Electric Co. v. Zuckerman* , *supra* , 189 Cal.App.3d at p. 1135.)

[4] An expert opinion has no value if its basis is unsound. (*People v. Lawley* (2002) 27 Cal.4th 102 , 132; *People v. Bassett* (1969) 69 Cal.2d 122 , 141, 144.) Matter that provides a reasonable basis for one opinion does not necessarily provide a reasonable basis for another opinion. Evidence Code section 801, subdivision (h), *states that a court must determine whether the matter that the expert relies on is of a type that an expert reasonably can rely on "in forming an opinion upon the subject to which his testimony relates ."* (Italics added.) *We construe this to mean that the matter relied on must provide a reasonable basis for the particular opinion offered, and that an expert opinion based on speculation or conjecture is inadmissible.* (*Smith v. ACandS, Inc.* (1994) 31 Cal.App.4th 77 , 93, disapproved on another point in *Camargo v. Tjaarda Dairy* (2001) 25 Cal.4th 1235 , 1245; see Cal. Law Revision Com. com., 29B West's Ann. Evid. Code (1995 ed.) foll. § 801, p. 20 ["irrelevant or speculative matters are not a proper basis for an expert's opinion"].) [Emphasis Added]

The court need only look at the testimony of Mr. Sipes who stated he did not use standard means to gather data, but some exotic methodology that by his own testimony is not used by other experts for purposes of rendering his opinion.

1 In addition, applying the same analysis as the Lockheed Litigation Cases, supra, court to the
2 testimony of Mr. Sipes, considering what the essential thrust of his attempted testimony would be, this
3 court can clearly see that what he is attempting to testify to is that celibacy = sexual deviance and the
4 celibate system = cover up of that sexual deviance. That goes beyond the pale of the absurd and is
5 completely without any evidentiary foundation.

6 Finally, it is certainly beyond any question that Mr. Sipes testimony is necessarily based on a
7 determination of the credibility of a party. This matter has been previously briefed to the court. Suffice
8 it to say, when an expert can render an opinion when he or she assumes credibility of the party on
9 whose behalf he or she is testifying on the one hand but cannot render an opinion to a hypothetical by
10 reversing the credibility equation, assuming credibility on the part of an adverse party, no stronger
11 evidence of the unreasonable and excludable basis for such opinion can be made.

12 The testimony should be excluded in its totality.

13 Dated: March 14, 2005

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

14 By _____

15 Vladimir F. Kozina
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Deposition Outtakes of A.W. Richard Sipes Exhibit A

21:11 **MR. KOZINA:** But we would want all your opinions
12 that you're going to offer at trial today, so go ahead.

13 **Continue.**

14 **THE WITNESS:** Well, I'm certainly open to that
15 after I read the other documents.

22:18 **MR. KOZINA:** Let me ask you a question, Mr. Sipes
19 (sic). You were declared sometime ago and as of that time
20 you were ready to offer your opinions. Not as of
21 yesterday, but as of at least a month ago --

22 **MR. MacKOUL:** That's misstating --

23 **MR. KOZINA:** -- it was declared that you would be
24 available to --

25 **MR. MacKOUL:** That's not true.

23: 1 **THE REPORTER:** One at a time, please.

2 **MR. KOZINA:** Counsel, I am going to conduct this
3 deposition. I don't need editorial comments from you.

4 **MR. MacKOUL:** You're going to get the editorial
5 comments from me.

6 **MR. KOZINA:** Then you're going to wait until I'm
7 done talking. Then when I'm done, you will speak.

8 **You were not aware of any matter concerning**
9 **Miss Stephens until yesterday.**

10 Is that correct?

11 **A.** Whatever the document I got was yesterday.

12 **Q.** But you didn't have that before.

13 Is that correct?

14 **A.** Well, I didn't have a lot of these documents two
15 months ago.

16 **Q.** When did you first receive the documentation in
17 this blue file?

18 **A.** I don't know when I put it in here.

19 **Q.** When did you receive that?

20 **A.** (No response.)

21 **Q.** Do you keep a log of any of this material?

22 **A.** Well, I have it all here. If you'd -- would you
23 give me this red folder?

23:24 **Q.** Do you have a log of when you receive certain
25 materials?

24: 1 **A.** I usually do at my house. I put them in a book.

2 **Q.** Do you have that with you so we can take a look
3 at it?

4 **A.** No. That would be just my daybook.

5 Q. But it would assist us in understanding when you
6 received certain documents.

7 A. Well --

8 MR. MacKOUL: Let me just say for the record that
9 this expert is entitled under the law to testify up until
10 trial based on any information that he has to form his
11 opinion. He got Miss Stephens' report yesterday. He had
12 time to review it. He comes in today after reviewing it.
13 He's basing his opinion on that record from Miss Stephens.
14 There's nothing wrong with that -- whether he gets it a
15 minute ago or two minutes ago or two months ago.

16 MR. KOZINA: I would just refer to the provisions
17 of CCP 2034 and the decision of the law relating to it in
18 response to that.

19 All right. What else have you gotten in addition to
20 this very late record -- did you get a transcript of
21 Miss Stephens or did you just get records?

22 MR. MacKOUL: Just records.

23 THE WITNESS: Do you want me to look right now?

24 MR. KOZINA: Yes, please.

25 MR. MacKOUL: I haven't gotten the transcript. I
25: 1 just gave him records.

2 MR. KOZINA: We'll have him say that, since he's
3 the one testifying.

4 THE WITNESS: This is from Sonnee Weedn. I have
5 that report.

6 MR. KOZINA: Okay. And you received that before
7 yesterday?

8 A. No, I believe I received this yesterday, also.

9 This is by Diane Stephens. I reviewed this record. I
10 reviewed --

11 Q. What is that document you just put back in?

12 A. It's published January 30th, '05 from The
13 Record's staff writer. I got it off the Internet.

14 Q. Could I have a chance to look at that?

15 A. Sure.

**39:21 Okay. You're an expert witness and have been so
22 designated and I'd like to just get to your opinions so
23 why don't we move on?**

24 Other than the documents we've discussed, are there
25 any other documents, save and except for the one we've
40: 1 held until you can get an opinion from private counsel,
2 that you've relied upon in reaching any of your opinions
3 today?

4 A. Well, I have -- I've written seven books on this

5 issue of sex, celibacy and so on and I've taken out what
6 some of the lawyers extract as being useful to their
7 consideration. So it's very hard for me to say. I have
8 done this research for over 40 years.

9 Q. Well, of course, we expect that we all use our
10 collective wisdom, understanding and knowledge. I was
11 just concerned with any documents that you expressly used
12 for this particular case.

13 A. No.

14 Q. And with that understanding -- and obviously
15 realizing that you can rely upon your experience and
16 education -- these would be the documents -- the sum of
17 the documents that you have.

18 Is that correct?

19 A. Yes, sir.

46: 9 Q. And would you as part of your interview process
10 and reviewing -- and the review of documents make notes?

11 A. Yes. In this kind of work, it's a little
12 different, because sometimes the lawyers ask me to prepare
13 a document -- either a declaration or an affidavit, and I
14 believe that there was something that was prepared -- that
15 I prepared in the very beginning of this that was
16 submitted to you. I'm sorry. I don't have a copy in my
17 file here.

18 Q. What was that?

19 A. I think it was a summary of the opinions I was to
20 give. I'd have to ask the lawyer.

21 MR. MacKOUL: I never received anything like
22 that.

23 MR. KOZINA: We never received anything.

24 THE WITNESS: You never received that?

25 MR. MacKOUL: I never received anything like
47: 1 that.

2 THE WITNESS: Okay. In many cases something like
3 that is asked for, and in this case, I guess it was not.
4 I did this on the phone when I reviewed these documents.

5 This is a list of what I was allowed to do as a
6 psychiatrist's assistant in the State of Maryland
7 (indicating).

8 MR. KOZINA: This is one of the documents you've
9 been kind enough to provide to us that you've extricated
10 from other depositions?

11 A. Right. They oftentimes ask the kinds of
12 questions you're asking.

13 Q. The reason I ask that is, just for the record,

14 this Deposition Exhibit 389 has no relevance to this case?

15 A. Right.

16 Q. This is merely a summary of your duties and
17 obligations and rights as a basic psychiatric --

18 A. Psychiatrist's assistant.

61: 7 O. Okay. What I'd like you to do now in order is:

**8 Tell me what opinions do you intend on offering at trial
9 concerning this matter?**

10 A. Yes. My opinion is that the core of this problem
11 are allegations by three girls of the behavior of a parish
12 priest and from everything that I've reviewed, that their
13 story is absolutely consistent for people this age; that
14 the picture I get -- and there's no conflict about this at
15 all of what happened -- that a priest who was an assistant
16 in the parish invited really himself to this family's home
17 and in doing so he approached the youngest of the children
18 in saying, "Oh, it would be nice to come to supper. Can I
19 come to supper?" And the young girl saying to the mother,
20 "Can Father come to supper?" That was one instance.

21 The other instance was that they were on the bike and
22 he was coming from visiting Father Ernesto and he
23 stopped --

24 Q. Excuse me. I don't mean to interrupt you,
25 because we're asking for opinions, but you're giving me an

62: 1 explanation of your opinions.

2 A. Okay.

3 Q. I just need to know the summary of the opinions.

4 Then we'll go into the basis for your opinion.

5 Is that fair enough?

6 A. Sure. That's fair enough.

7 Q. Okay.

8 A. I'm an old teacher. That is why I responded very
9 ingenuously to his putting his hand up, because I know
10 that in some depositions I can go on and on and on. I can
11 lecture on this for hours.

12 Now, my opinion --

13 Q. Yes. Can you give us a synopsis?

14 A. Yes. The opinion is that this priest had a clear
15 pattern of grooming these children for sexual activity --
16 this parish priest. His approach to the daughters. His
17 activity there. His insinuation into the family, et
18 cetera.

19 This exists within the context of a parish in which
20 the pastor had a very interesting relationship with the
21 mother. He counseled the mother during a very difficult

22 divorce and he was at that time a very, very close friend
23 to the family.

24 Q. Is this part of your opinion?

25 A. This is part of my opinion, yeah, that the
63: 1 context is very important. And my opinion is that this
2 led the children down a path of betrayal. First of all,
3 there was a betrayal by the father, who was abusive. Then
4 there was a betrayal by the pastor, who became friends to
5 the mother and exchanged not only her letters with him,
6 but his letters with her and biking together, et cetera,
7 after a counseling relationship. The third betrayal was
8 by the priest who came to the house and tickled the girls
9 in activity that cannot be minimized. The fourth betrayal
10 was when the young girl went to consult and report this to
11 the pastor and the pastor involved her and really trapped
12 her in a tremendously abusive situation of major
13 proportions in terms of terror of a child. The fifth
14 betrayal was the priest dismissing the girls from altar
15 serving in a non-pastoral way and, of course, the report
16 from the diocese about him was that he needed some
17 pastoral upbringing. And then the betrayal in terms of
18 even insinuating the power in the whole structure. For
19 instance, the pastor says that he instructed his staff to
20 kind of crowd out this woman -- this mother of the
21 children --

22 Q. Who says this?

23 A. The pastor.

24 Q. Actually says that?

NOTE FOR THE COURT: FR. ILLO'S DEPOSITION WAS NEVER TAKEN

25 A. He actually says that in his deposition, that he
64: 1 instructed the staff to, in a sense -- I can't remember
2 the words, but I can find them in here. And the staff,
3 being more or less almost to a woman devoted to the
4 priest, did this, but I noticed in any comments that I
5 have --

6 Q. Excuse me. This is not part of the opinion.

7 This is an explanation.

**8 What's the rest of your opinion? I was a teacher for
9 16 years myself so I'm trying to keep you on track.**

10 A. Thank you. I appreciate that.

11 Q. We'll get through this.

12 A. That the betrayal was that the pastor did intrude
13 himself into the family in a betrayal way.

14 Q. All right. Did you form any opinions with

15 respect to any of the conduct on behalf of Monsignor Ryan,
16 Bishop Blaire or the corporate entity, the diocese, the
17 Roman Catholic Bishop of Stockton, a corporation sole,
18 with respect to when they became aware of these
19 allegations?

20 A. My opinion about the report, once given to the
21 bishop, was that he acted summarily and he acted correctly
22 in that regard; that there are some questions, perhaps,
23 about how other things were handled. My opinion would be
24 that the diocese did not examine the -- this priest and
25 his behaviors in the past before they accepted him into
65: 1 the diocese. The fact that there is no documentation is
2 not proof that there was nothing there.

3 Q. Do you have any proof that there was something
4 there?

5 A. I have no proof.

6 Q. Okay. Are you then assuming that there was
7 something there?

8 A. I am assuming the -- the fact is that the diocese
9 did not do a thorough investigation. They did a summary
10 investigation, if anything.

11 Q. Granted, but does this fall under the no harm, no
12 foul rule in the sense that there was nothing there,
13 unless you've got something for us?

14 A. I'll tell you, letters even of commendation of
15 priests who are tremendously perverse abusers, such as
16 Father Porter, such as Father Goeghan, such as Father
17 Shanley -- they all had recorded testimonies from another
18 diocese that these people were in good standing and okay.

19 Q. Is that something someone can rely upon?

20 A. Pardon me?

21 Q. Can somebody rely upon that?

22 A. No.

23 Q. Would you in the context of your own
24 employment -- if you were to request a letter of
25 recommendation and it was prepared and forwarded to a
66: 1 prospective employer, what would you expect that employer
2 to do beyond accepting the letter of recommendation?

3 A. Well, you're talking about employment/employment.
4 Clerical, quote, employment is a little different than
5 ordinary employment of another corporation.

6 Q. Let me clarify that.

7 Within the context of being a psychiatrist's
8 assistant, where you would have access to minor children,
9 if there was a letter of recommendation sent, would you
10 expect the party who was going to employ you not to accept

11 that letter?

12 A. Not wholly. In this area, you cannot trust
13 anyone. I say that by sad experience.

14 Q. That way we cannot even trust you then, is what
15 you're telling me.

16 Is that what you're saying?

17 A. No, don't just trust me, if there's no
18 corroborating things, but there's a little bit to
19 corroborate this.

20 Q. I'm playing a little bit here with words.

21 A. That's all right.

22 **Q. I'm just trying to compartmentalize this a bit.**

23 **With regard to two of the diocese, which I would**
24 **include Bishop Blaire and Monsignor Ryan and the corporate**
25 **entity of the diocese -- did you find anything that you**
67: **1 felt was inappropriate with regard to their response once**
2 they were informed of some allegations?

3 A. I think they moved into action very quickly,
4 which I think is very good. I feel that their pastoral
5 approach to this family and to these girls was very much
6 lacking and I know it's very difficult for a bishop or the
7 priest, given the current circumstance of litigation and
8 so on, to act pastorally and so on.

9 You see, I don't think that what happens here in
10 Stockton can be removed from what happened in Los Angeles.
11 After all, Bishop Blaire was a bishop and head of the
12 priests in Los Angeles and he was vicar or priest, I
13 believe, in 1991 and 1992, when 56 of the 710 priests in
14 Los Angeles were sexual abusers.

15 Q. Okay. But I guess what I'm getting at -- this is
16 where I'm going to try to rein you in, because you're like
17 me. I get on a topic. I start talking.

18 What do you know specifically about the manner in
19 which the Diocese of Stockton functions with regard to
20 reports of alleged sexual abuse when it comes to their
21 attention, let's say, beginning in the calendar year 2000
22 forward?

23 A. I have seen the document according to which they
24 operate. I believe it's the 1999 California -- all the
25 California bishops got together and have a standard kind
68: **1 of response, and I do think he responded to this.**

2 Q. Okay. So am I clear in my understanding that you
3 feel there should have been more of an investigation on
4 the background of Father Arakal?

5 A. Yes.

6 Q. That the -- don't worry. I won't keep you here

7 too terribly long. I just want to get some of this basic
8 stuff because I can get it basically out of your
9 records -- that the list of items you gave us with regard
10 to betrayals -- is that really what you feel is the
11 difficulty in this case, the various betrayals that you
12 believe were suffered by the plaintiffs?
13 A. Well, I think that the final betrayal was the
14 reinstatement of Father Arakal.

**75:13 Q. About this case. I need to know every opinion
14 that you have and you were kind enough to provide us with
15 a list of comments which were opinions you've come to.
16 Are there any other opinions that you intend to offer
17 at trial?**

18 A. Well, let me say, if this is not clear, my
19 opinion is that the facts substantiate that this priest
20 did interact with these girls, and in a way that was
21 grooming and sexual; that the pastor was extremely abusive
22 to these two -- especially this young girl that wanted to
23 confide in him, and he set up a situation in which she was
24 overpowered.

25 I believe that those are facts and I believe --

76: 1 Q. Are those your opinions?

2 A. Well, I believe -- my opinion is that those are
3 facts.

**76:17 Q. Have you then based your opinions on a belief
18 that what the girls are saying is correct?**

19 A. I am saying that I believe what the girls say,
20 because I have seen their testimony on tape or their
21 interview on tape. I have seen the interviews or the
22 depositions that were taken from them. I have seen what
23 the judge says. I have read what the psychologists have
24 said.

76:25 MR. KOZINA: What judge?

77: 1 MR. COUGHLAN: What judge said what?

2 THE WITNESS: Judge -- I'm sorry. The detective.

3 MR. KOZINA: Oh, okay. I was going to say, we
4 got a judge in this?

5 THE WITNESS: No, what the detective said, et
6 cetera.

7 So yes, I am basing my belief from my experience, from
8 my training, from everything I know over 45 years that the
9 story that these girls are telling is a true and factual
10 story.

11 MR. COUGHLAN: Okay. Now, on the flip side, you

**12 would also be basing your opinions on a belief that the
13 testimony of my client, Father Arakal, is not credible,
14 correct?**

15 A. I do believe that, yes.

16 Q. Okay. So you are believing the plaintiffs and
17 you are disbelieving the defendants, correct?

18 MR. MacKOUL: Which defendants? Your client
19 specifically or all of them?

20 MR. COUGHLAN: All of them.

21 THE WITNESS: Well, no. You know, like all
22 things there are bits and pieces, but I believe in Father
23 Arakal's statements, especially to the police, that -- you
24 know, he says, "Oh, no, they were after me. They started
25 the tickling, you know. I didn't start the tickling.

78: 1 They started the tickling."

2 Now, he goes on and not just says that, but he blames
3 them for it, that "I just went along."

4 I don't believe that. He said he put his thing in the
5 pocket and never wanted the girls to do that; however, the
6 girls uniformly say that, "Yes, he did," and it fits in
7 with the picture, and that when the mother discovered that
8 or knew that she said, "Stop that. You can't do that."

**78:25 Q. Let me ask it carefully. Without having to
79: 1 decide who is credible and who is not, can you provide the
2 opinions you have provided today?**

3 MR. MacKOUL: I just --

4 THE WITNESS: Oh, no.

5 MR. MacKOUL: I just want to put an objection on
6 the record.

7 MR. KOZINA: The answer was "No."

8 MR. MacKOUL: Improper --

9 MR. KOZINA: No, it's not. It's what he said.

10 THE WITNESS: Well, I'm not quite understanding
11 your question. I read everything and I have an opinion.

12 MR. KOZINA: All right.

13 THE WITNESS: And this priest could be --
14 objectively, before I start, this priest could be
15 objectively pure as the driven snow.

16 MR. KOZINA: But what is your opinion, if you
17 were to assume the girls are not credible -- what is your
18 opinion, if you were to assume that the girls were not
19 credible and the priests and the diocese was not credible?

20 MR. MacKOUL: That's an improper hypothetical.
21 He testified that the girls are credible and the priest is
22 not credible, so you're twisting his testimony. That's an
23 improper hypothetical.

24 MR. KOZINA: Well, the hypotheticals are intended
25 to be "What if's." If it's supported by the testimony --
80: 1 if it is your testimony that the priests are credible and
2 the girls are not, what is your opinion?

3 MR. MacKOUL: He's given his opinion.

4 MR. KOZINA: Well, let's have his opinion, then.
5 I'm entitled to it.

6 MR. MacKOUL: If he understands the question
7 you're asking him.

8 THE WITNESS: If I understand the question.

9 MR. KOZINA: In that case, Counsel, I would move
10 to strike all this testimony, for the record, but go
11 ahead.

12 Tell me what your opinion would be if you found that
13 the girls were not credible and the priests were.

14 A. You would like to do that, wouldn't you?

15 Q. This is not a rhetorical exercise, Mr. Sipe. I
16 asked you a question. You are required to respond to it,
17 if you can.

18 What would your opinion be if the girls were not
19 credible and the priests were?

20 MR. MacKOUL: Same objection. Improper
21 hypothetical. Misstates his testimony.

22 THE WITNESS: I really can't answer that.

23 MR. KOZINA: You don't want to answer it or you
24 can't?

25 THE WITNESS: No. You're asking me --

81: 1 MR. MacKOUL: Badgering the witness.
2 Argumentative.

3 THE WITNESS: You're asking me, for instance, a
4 hypothetical. What would happen if 9-11 never happened?
5 I mean, not only 9-11 in this parish, but 9-11 nationally.

6 MR. KOZINA: Is this an answer or a question?

7 A. This is an answer.

82:25 Q. I'd like to know every opinion you're going to
83: 1 offer at trial, not a preliminary opinion. If you're not
2 prepared to testify as to all the opinions you're going to
3 offer at trial, then we're going to move to exclude you on
4 that basis.

5 Now, I want to know every opinion you intend to offer
6 at trial. I'm entitled to that.

7 A. You have had two hours to examine me on the
8 opinions that I will give. I will stand by those.

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Attorneys for: Bishop Stephen Blaire, Msgr. Richard Ryan, Fr. Joseph Illo,
Roman Catholic Bishop of Stockton, a corporation sole, St. Joseph's Church

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

**KATHLEEN MACHADO INDIVIDUALLY AND AS
GUARDIAN AD LITEM FOR RACHEL LOMAS AND
AMBER LOMAS**

No. CV 018440

Plaintiff,

vs.

**DECLARATION OF
VLADIMIR F. KOZINA
RE DEPOSITION OUTTAKES**

**FR. JOSEPH ILLO, FR. FRANCIS JOSEPH, A.K.A.
FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,
BISHOP STEVEN BLAIRE, AND THE DIOCESE OF
STOCKTON, ET AL,**

**DATE: FEBRUARY 22, 2005
TIME: 1:30 PM
DEPT: 41**

Defendants.

I, Vladimir F. Kozina declare

That if called to testify, I could competently testify to the following.


That I am an attorney licensed to practice law and practicing law before the courts of the State of California and am one of the attorneys for Defendants Fr. Joseph Illo, Bishop Stephen Blair, Monsignor Richard Ryan and the Roman Catholic Bishop of Stockton, a corporation sole herein

That the outtakes of the deposition of A.W. Richard Sipes are true and correct copies of the original having received them from the court reporter in ASCII Text Form.

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That I declare the above of my own knowledge except those matters set forth on information and belief and those I helieve to be true.

That I make this declaration under penalty of perjury under the laws of the State of California. That this declaration is executed in Stockton, California on March 14, 2005.


Vladimir F. Kozina

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cy
Filed MAR 14 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
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 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**

13
14 **KATHLEEN MACHADO AS AN INDIVIDUAL) CASE No. CV018440**
15 **AND AS GUARDIAN AD LITEM FOR RACHEL)**
16 **LOMAS AND AMBER LOMAS,) ORDER GRANTING DEFENDANTS'**
17 **Plaintiffs,) MOTION FOR JUDGMENT OF**
18 **vs.) NONSUIT**
19 **FR. JOSEPH ILLO, FR. FRANCIS JOSEPH AKA) DEPARTMENT: 41**
20 **FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,) TRIAL JUDGE: HON. ELIZABETH HUMPHREYS**
21 **BISHOP STEVEN BLAIRE AND THE DIOCESE) TRIAL DATE: FEBRUARY 22, 2005**
22 **OF STOCKTON, ET AL.,)**
23 **Defendants.)**

24 **ORDER**

25 The motion of defendants FATHER JOSEPH ILLO, MONSIGNOR RICHARD RYAN,
26 BISHOP STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a
27 Corporation Sole, and FATHER FRANCIS JOSEPH for an order granting judgment of nonsuit
pursuant to Code of Civil Procedure Section 581c(a) on plaintiffs' opening statement was heard
by the court on March 8, 2005. Defendants FATHER JOSEPH ILLO, MONSIGNOR

28 Order

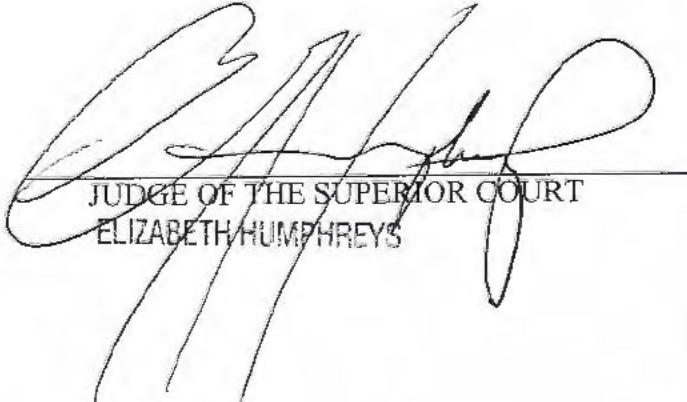
1 RICHARD RYAN, BISHOP STEPHEN E. BLAIRE, and THE ROMAN CATHOLIC BISHOP
2 OF STOCKTON, a Corporation Sole, appeared by counsel Vladimir F. Kozina and defendant
3 FATHER FRANCIS JOSEPH appeared by counsel Michael Coughlin.

4 Plaintiffs having completed their opening statement and good cause has been shown for
5 an order for judgment of nonsuit as to the issue of negligence per se within Plaintiffs' Third
6 Cause of Action based on the following statutes:

- 7 1. Penal Code Section 261.5
- 8 2. Penal Code Section 288a(b)(1)

9 **IT IS ORDERED, ADJUDICATED, AND DECREED** that the motion of defendants
10 FATHER JOSEPH ILLO, MONSIGNOR RICHARD RYAN, BISHOP STEPHEN E. BLAIRE,
11 and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation Sole be, and hereby is,
12 granted, that Plaintiffs take nothing by way of the above issues within the Third Cause of Action
13 of their complaint on file herein, and that this order shall operate as an adjudication on the merits
14 of the above issues.

15
16
17 DATED: MAR 14 2005

18 
19 JUDGE OF THE SUPERIOR COURT
20 ELIZABETH HUMPHREYS
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/11/05 10:00 AM 41 met at Stockton, California
 Date Dept

Hon. Elizabeth Humphreys
 Judge

CV018440 KATHLEEN MACHADO ET AL
 VS
 FR. JOSEPH ILLO ET AL

Clerk: Charlene Gray
 Reporter/Tape: Cara Poe
 Bailiff: Keith Sales / CA - Nhia Moua
 Interpreter: _____

[PLTF] Kathleen Machado

 [DEFT] Joseph Illo

 [DEFT] Francis Joseph AKA Joseph Arakal
 [DEFT] Richard Ryan

ANTHONY BOSKOVICH
 GEORGE J MACKOUL
 MICHAEL PHILLIPS & VLADIMIR F KOZINA
 PAUL BALESTRACCI
 MICHAEL D COUGHLAN
 PAUL BALESTRACCI

Nature of proceedings: Jury trial;

Hearing held
 Matter is continued to _____ in Dept. _____ due to _____
 Dropped Granted Denied

Out of the presence of the jury, Richard Sipe is sworn to testify for an E.C. 402 hearing regarding his qualifications as an expert witness. The Court rules that Mr. Sipe can testify regarding how the priesthood works, but not as to the specifics of this case.

All jurors and alternates are present in the courtroom.

Kathleen Machado returns to the witness stand for further testimony. The court reminds her that she is still under oath.

Sworn and examined on behalf of the Plaintiffs:

Rose Machado Wyeth

Owen Kummerle pursuant to E. C. 776.

Counsel stipulate to the foundation of Plaintiffs' exhibits #7 & #8 and to the policy of reporting child abuse in the Catholic Church for the years 1999, 2000 & 2001.

Exhibits are introduced and received into evidence pursuant to the Record of Exhibit lists which will be attached to the last minute order of this trial.

The Court admonishes the jury and excuses them for the week-end.

Further Jury Trial is continued to March 15, 2005 at 10:00 A.M. in Department 41. The attorneys will be present March 14, 2005 for the Court's ruling on Richard Sipe's testimony.

Court adjourns.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/10/05 10:00 AM 41 met at Stockton, California
Date Dept

Hon. Elizabeth Humphreys

Judge

CV018440 KATHLEEN MACHADO ET AL
 VS
 FR. JOSEPH ILLO ET AL

[PLTF] Kathleen Machado

 [DEFT] Joseph Illo

 [DEFT] Francis Joseph AKA Joseph Arakal
 [DEFT] Richard Ryan

Clerk: Charlene Gray
Reporter/Tape: Carrie Dall / Cara Poe
Bailiff: Keith Sales / CA - N. Moua
Interpreter: _____

ANTHONY BOSKOVICH
GEORGE J MACKOUL
VLADIMIR F KOZINA
PAUL BALESTRACCI
MICHAEL D COUGHLAN
PAUL BALESTRACCI

Nature of proceedings: Jury trial;

- Hearing held
 Matter is continued to _____ in Dept. _____ due to _____
 Dropped Granted Denied

All jurors and alternates are present in the courtroom.

Amber Lomas returns to the witness stand for further testimony.

Kathleen Machado returns to the witness stand and continues with testimony throughout the rest of the day.

Exhibits are introduced and received into evidence pursuant to the Record of Exhibit lists which will be attached to the last

minute order of this trial.

The Court admonishes the jury and excuses them for the evening.

Further Jury Trial is continued to March 11, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/09/05 10:00 AM 41 met at Stockton, California
 Date Dept

Hon. Elizabeth Humphreys

Judge

CV018440 KATHLEEN MACHADO ET AL
 VS
 FR. JOSEPH ILLO ET AL

Clerk: Charlene Gray
 Reporter/Tape: Carrie Dall
 Bailiff: Keith Sales / C. A. - Nhia Moua
 Interpreter: _____

- [PLTF] Kathleen Machado
- [DEFT] Joseph Illo
- [DEFT] Francis Joseph AKA Joseph Arakal
- [DEFT] Richard Ryan

- ANTHONY BOSKOVICH
- GEORGE J MACKOUL
- VLADIMIR F KOZINA
- PAUL BALESTRACCI
- MICHAEL D COUGHLAN
- PAUL BALESTRACCI

Nature of proceedings: Jury trial;

- Hearing held
- Matter is continued to _____ in Dept. _____ due to _____
- Dropped Granted Denied

Out of the presence of the jury, the Court rules on Defendants' Motion for Non-Suit. The Court has determined that the ruling may be made on issues rather than a cause of action. The Motion for Non-Suit is granted as to the issue of negligence per se within Plaintiffs' Third Cause of Action based on Penal Code Sections 261.5 and 288a(b)(1).

Sworn and examined on behalf of the plaintiffs:

Amber Lomas

Kathleen Machado.

Exhibits are introduced and received into evidence pursuant to the Record of Exhibit lists which will be attached to the last minute order of this trial.

The Court admonishes the jury and excuses them for the evening.

Further Jury Trial is continued to March 10, 2005 at 10:00 A.M. in Department 41. Court adjourns.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/ 8/05 10:00 AM 41 met at Stockton, California

Hon. Elizabeth Humphreys

Date	Dept	Judge
CY018440	KATHLEEN MACHADO ET AL VS FR. JOSEPH ILLO ET AL	Clerk: Charlene Gray Reporter/Tape: Carrie Dall Bailiff: Keith Sales / CA - Nhia Moua Interpreter: _____
<input checked="" type="checkbox"/> [PLTF] Kathleen Machado <input type="checkbox"/> <input checked="" type="checkbox"/> [DEFT] Joseph Illo <input type="checkbox"/> <input checked="" type="checkbox"/> [DEFT] Francis Joseph AKA Joseph Arakal <input type="checkbox"/> [DEFT] Richard Ryan	<input type="checkbox"/> ANTHONY BOSKOVICH <input checked="" type="checkbox"/> GEORGE J MACKOUL <input checked="" type="checkbox"/> VLADIMIR F KOZINA <input type="checkbox"/> PAUL BALESTRACCI <input checked="" type="checkbox"/> MICHAEL D COUGHLAN <input type="checkbox"/> PAUL BALESTRACCI	

Nature of proceedings: Jury trial;

- Hearing held
 Matter is continued to _____ in Dept. _____ due to _____
 Dropped Granted Denied

Out of the presence of the jury, the Court informs counsel which CACI instructions will be read to pre-instruct the jury.

The Court rules on defendants' motion in limine regarding the internal governance of the church. The motion is denied in part and granted in part. The Court has determined the investigation by the Church is appropriate evidence. The findings of the investigation and why the procedure was taken are not appropriate evidence. Fiduciary obligation is confidential obligation. Counsel may object during trial to the part granted.

The jurors are present in the courtroom.

The Court pre-instructs the jury.

Mr. MacKoul presents opening statements on behalf of the plaintiffs.

Out of the presence of the jury, Mr. Kozina motions the court for non-suit pursuant to C.C.P. 581 c cont. on pg. 2

Pg. 2 Minute Order of 3-8-05
CV018440

and files Points and Authorities in open court on behalf of the defendants Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton, a corporation sole. Counsel stipulate that no oral copulation or sexual intercourse occurred. Mr. Coughlan joins in the motion for non-suit on behalf of Defendant, Fr. Arakal. The Court reserves on ruling at this time.

The jury is returned into the courtroom.

Mr. Kozina presents opening statements on behalf of the Defendants Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton, a corporation sole.

Out of the presence of the jury, Counsel present arguments for Mr. Kozina's motion for non-suit. The Court will determine judgment for non-suit as to the Third Cause of Action.

With the jury present in the courtroom, Mr. MacKoul presents further opening statements on behalf of the plaintiffs.

Mr. Coughlan presents opening statements on behalf of Defendant, Fr. Frances Arakal.

Rachel Lomas is sworn and examined on behalf of the plaintiffs.

Certain exhibits are introduced and received into evidence pursuant to the Record of Exhibit lists will be attached to the last minute order of this trial.

The Court admonishes the jury and excuses them for the evening.

Further Jury Trial in continued to March 9, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

Filed MAR 8 2005
ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

KATHLEEN MACHADO, et al
Plaintiffs

vs

FR. JOSEPH ILLLO, et al
Defendants

Case # CV018440

Dept. 41

**PRE-INSTRUCTIONS GIVEN TO JURY
(sanitized)**

Elizabeth Humphreys
Judge of the Superior Court

You have now been sworn as jurors in this case. I want to impress on you the seriousness and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a fair verdict based on the evidence presented. Before we begin, I need to explain how you must conduct yourselves during the trial.

Do not allow anything that happens outside this courtroom to affect your decision. During the trial do not talk about this case or the people involved in it with anyone, including your family and friends. You may say you are on a jury and how long the trial may take, but that is all. You must not even talk about the case with the other jurors until after I tell you that it is time for you to decide the case.

During the trial you must not listen to anyone else talk about the case or the people involved in the case. You must avoid any contact with the parties, the lawyers, the witnesses, and anyone else who may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report the incident to me as soon as you can.

After the trial is over and I have released you from jury duty, you may discuss the case with anyone, but you are not required to do so.

During the trial, do not read, listen to, or watch any news reports about this case. I have no information that there will be news reports concerning this case. You must decide this case based only on the evidence presented in this trial and the instructions of law that I will provide. Nothing presented outside this courtroom is evidence unless I specifically tell you it is.

Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. If you do need to

view the scene during the trial, you will be taken there as a group under proper supervision.

It is important that you keep an open mind throughout this trial. Evidence can only be presented a piece at a time. Do not form or express an opinion about this case while the trial is going on. You must not decide on a verdict until after you have heard all the evidence and have discussed it thoroughly with your fellow jurors in your deliberations.

Do not concern yourselves with the reasons for the rulings I will make during the course of the trial. Do not guess what I may think your verdict should be from anything I might say or do.

When it is time to begin your deliberations, you will meet in the jury room. You may discuss the case only in the jury room and only when all the jurors are present.

Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

You must decide what the facts are in this case. And, I repeat, your verdict must be based only on the evidence that you hear or see in this courtroom.

At the end of the trial, I will explain the law that you must follow to reach your verdict. You must follow the law as I explain it to you, even if you do not agree with the law.

You have been given notebooks and may take notes during the trial. Do not remove the notebooks from the jury box at any time during the trial. You may take your notes into the jury room during deliberations.

You should use your notes only to remind yourself of what happened during the trial. Do not let your note-taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as they testify. Nor should you allow your impression of a witness or other evidence to be influenced by whether or not other jurors are taking notes. Your independent recollection of the evidence should govern your verdict and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

[The court reporter is making a record of everything that is said. If during deliberations you have a question about what the witness said, you should ask that the court reporter's records be read to you. You must accept the court reporter's record as accurate.]

To assist you in your tasks as jurors, I will now explain how the trial will proceed.

Kathleen Machado, Rachel Lomas, and Amber Lomas filed this lawsuit. They are called plaintiffs. They seek damages from Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and the Roman Catholic Diocese of Stockton, who are called defendants. Each plaintiff and each defendant is called a party to the case.

First, each side may make an opening statement, but neither side is required to do so. An opening statement is not evidence. It is simply an outline to help you understand what that party expects the evidence will show. Also, because it is often difficult to give you the evidence in the order we would prefer, the opening statement allows you to keep an overview of the case in mind during the presentation of the evidence. You cannot use it to make any decisions in this case.

Next, the jury will start hearing the evidence. Kathleen Machado, Rachel Lomas, and Amber Lomas will present their evidence first. When Kathleen Machado, Rachel Lomas, and Amber Lomas are finished, Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and the Roman Catholic Diocese of Stockton will have an opportunity to present their evidence.

Each witness will first be questioned by the side that asked the witness to testify. This is called direct examination. Then the other side is permitted to question the witness. This is called cross-examination.

Documents or objects referred to during the trial are called exhibits. Exhibits will be given a number and marked so they may be clearly identified. Exhibits are not evidence until I admit them into evidence. You will be able to look at these exhibits during your deliberations.

There are many rules that govern whether something will be considered evidence in the trial. As one side presents evidence, the other side has the right to object and to ask me to decide if the evidence is permitted by the rules. Usually, I will decide immediately, but sometimes I may have to hear arguments outside of your presence.

After the evidence has been presented, I will instruct you on the law that applies to the case and the attorneys will make closing arguments. What the parties say in closing argument is not evidence.

The arguments are offered to help you understand the evidence and how the law applies to it.

There are 3 plaintiffs in this trial. You should decide the case of each plaintiff separately as if it were a separate lawsuit. Each plaintiff is entitled to separate consideration of his or her own claims. Unless I tell you otherwise, all instructions apply to each plaintiff.

There are 5 defendants in this trial. You should decide the case against each defendant separately as if it were a separate lawsuit. Each defendant is entitled to separate consideration of his or her own defenses. Unless I tell you otherwise, all instructions apply to each defendant.

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you see or hear during the trial. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. However, the attorneys for both sides can agree that certain facts are true. This agreement is called a stipulation. No other proof is needed and you must accept those facts as true in this trial.

Each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness has already answered, you must ignore the answer.

Sometimes an attorney may make a motion to strike testimony that you have heard. If I grant the motion, you must totally disregard that testimony. You must treat it as though it did not exist.

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased against any witness because of his or her race, sex, religion, occupation, sexual orientation, or national origin.

You must not consider whether any of the parties in this case has insurance. The presence or absence of insurance is totally irrelevant. You must decide this case based only on the law and the evidence.

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

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Attorneys for: Bishop Stephen Blaire, Msgr. Richard Ryan, Fr. Joseph Illo,
Roman Catholic Bishop of Stockton, a corporation sole, St. Joseph's Church

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Filed MAR 8 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

**KATHLEEN MACHADO INDIVIDUALLY AND AS
GUARDIAN AD LITEM FOR RACHEL LOMAS AND
AMBER LOMAS**

No. CV 018440

Plaintiff,

**FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
BISHOP STEVEN BLAIRE, AND
ROMAN CATHOLIC BISHOP OF STOCKTON, A
CORPORATION SOLE'S MOTION
FOR NON SUIT**

vs.

**FR. JOSEPH ILLO, FR. FRANCIS JOSEPH, A.K.A.
FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,
BISHOP STEVEN BLAIRE, AND THE DIOCESE OF
STOCKTON, ET AL,**

**TRIAL DATE: FEBRUARY 22, 2005
TIME: 1:30 PM
DEPT: 41**

Defendants.

COME NOW defendants FR. JOSEPH ILLO, MNSGR. RICHARD J. RYAN, BISHOP STEVEN BLAIRE,
AND ROMAN CATHOLIC BISHOP OF STOCKTON, A CORPORATION SOLE (INCORRECTLY NAMED HEREIN AS
THE DIOCESE OF STOCKTON) and move the court for non-suit as to the First, Second and Third Causes
of Action of the Complaint herein. This motion is made on the basis that plaintiffs have failed to set
forth facts sufficient to state a cause of action in their opening statement and on the further basis that as
a matter of law, abuse is outside the scope of clerical employment.

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FACTS

The court is asked to take judicial notice of the First Amended Complaint and the first three causes of action therein. Each of these causes of action basis its liability on the concept of "respondeat superior" with respect to the alleged actions of Fr. Arakal Joseph. The allegations indicate that the defendants were responsible as employers and supervisors. As set out in the plaintiff's opening statement, Fr. Arakal Joseph is a priest employed and supervised by moving defendants and that liability is alleged to arise out of this employment relationship.

These allegations, in the pleadings and in the opening statement, are based entirely on vicarious liability in the employment of a cleric. A judgment of non suit is appropriate with regard to these causes of action as to the moving defendants.

Law

Code of Civil Procedure § 581c provides in pertinent part:

"(a) Only after, and not before, the plaintiff has completed his or her opening statement, or after the presentation of his or her evidence in a trial by jury, the defendant, without waiving his or her right to offer evidence in the event the motion is not granted, may move for a judgment of nonsuit.

(b) If it appears that the evidence presented, or to be presented, supports the granting of the motion as to some but not all of the issues involved in the action, the court shall grant the motion as to those issues and the action shall proceed as to the issues remaining. Despite the granting of the motion, no final judgment shall be entered prior to the termination of the action, but the final judgment in the action shall, in addition to any matters determined in the trial, award judgment as determined by the motion herein provided for.

(c) If the motion is granted, unless the court in its order for judgment otherwise specifies, the judgment of nonsuit operates as an adjudication upon the merits."

The case of *Rita M. v. Roman Catholic Archbishop* (1986) 187 Cal.App.3d 1453, 1461 established that, as a matter of law, the types of abuse alleged are committed outside the scope of the cleric's employment, and the doctrine of respondeat superior is not available. See also *Mark K. v. Roman Catholic Archbishop* (1998) 67 Cal.App.4th 603; *Mary M. v. City of Los Angeles* (1991) 54 Cal.3d 202, 218.

↳ statute of limitations case

nonsuit
File
Blair
Ryan
Corp

1 In short, the allegations and what the evidence is as the plaintiff's have presented it in opening
2 statement attempt to apply the concept of respondeat superior to alleged acts that, as a matter of law,
3 cannot form the predicate for vicarious liability in this matter. Judgment of non suit should be granted.

4 Dated:

MAYALL, HURLEY, KNUITSEN, SMITH & GREEN

5 By


Vladimir F. Kozina

6 Attorneys for FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
7 BISHOP STEVEN BLAIRE, AND ROMAN CATHOLIC BISHOP
8 OF STOCKTON, A CORPORATION SOLE

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10 ① Civil battery
intentionally

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12 Sexually battery
13 intent

} circumstantial

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16 Neg. PERSZ / Neg.
17 PC 288 a (b) (1)

oral copulation ~~deleted~~

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19 261.5 unlawful sexual intercourse ~~deleted~~

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21 243.4 willful unlawful - touching

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23 ② libel

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25 ③ Slander - injury to reputation } circumstantial

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/04/05 10:00 AM 41 met at Stockton, California
 Date Dept

Hon. Elizabeth Humphreys
 Judge

CV018440 KATHLEEN MACHADO ET AL VS FR. JOSEPH ILLO ET AL	Clerk: Charlene Gray Reporter/Tape: Carrie Dall & Cara Poe Bailiff: Keith Sales / CA - Nhia Moua Interpreter:
<input checked="" type="checkbox"/> [PLTF] Kathleen Machado <input type="checkbox"/> <input checked="" type="checkbox"/> [DEFT] Joseph Illo <input type="checkbox"/> <input type="checkbox"/> [DEFT] Francis Joseph AKA Joseph Arakal <input type="checkbox"/> [DEFT] Richard Ryan	ANTHONY BOSKOVICH <input checked="" type="checkbox"/> GEORGE J MACKOUL <input checked="" type="checkbox"/> VLADIMIR F KOZINA <input checked="" type="checkbox"/> PAUL BALESTRACCI <input type="checkbox"/> MICHAEL D COUGHLAN <input checked="" type="checkbox"/> PAUL BALESTRACCI <input type="checkbox"/>

Nature of proceedings: Jury trial;

- Hearing held
- Matter is continued to _____ in Dept. _____ due to _____
- Dropped Granted Denied

Cause proceeds with jury selection. A panel is drawn and examined. Certain jurors are excused for cause and by peremptory challenge. This process continues until 12 jurors are sworn at 2:35 P.M. to try the issues of this case according to the evidence and instructions of the Court. Three alternate jurors are sworn to listen to the evidence and instructions of the court and (each) will act as a trial juror when called upon by the Court.

The Court admonishes the jurors and alternates and excuses them for the weekend.

Counsel present arguments regarding the motions in limine regarding Richard Sipe. The Court rules that Mr. Sipe will not be mentioned in opening statements. Counsel can request a hearing pursuant to E. C. 402 out of the presence of the jury if they have issues regarding his qualifications.

Further Jury Trial is continued to March 8, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/03/05 09:00 AM 41 met at Stockton, California

Hon. Elizabeth Humphreys

Date	Dept	Judge
CV018440	KATHLEEN MACHADO ET AL VS FR. JOSEPH ILLO ET AL	Clerk: Charlene Gray Reporter/Tape: Carrie Dall Bailiff: Keith Sales in #21 Interpreter: Court Attendant in #41 - Nhia Moua
<input type="checkbox"/> [PLTF] Kathleen Machado <input type="checkbox"/> <input type="checkbox"/> [DEFT] Joseph Illo <input type="checkbox"/> <input type="checkbox"/> [DEFT] Francis Joseph AKA Joseph Arakal <input type="checkbox"/> [DEFT] Richard Ryan		ANTHONY BOSKOVICH <input checked="" type="checkbox"/> GEORGE J MACKOUL <input checked="" type="checkbox"/> VLADIMIR F KOZINA <input checked="" type="checkbox"/> PAUL BALESTRACCI <input type="checkbox"/> MICHAEL D COUGHLAN <input checked="" type="checkbox"/> PAUL BALESTRACCI <input type="checkbox"/>

Nature of proceedings: Jury trial;

- Hearing held
- Matter is continued to _____ in Dept. _____ due to _____
- Dropped Granted Denied

The Court and counsel discuss and finalize the Jury Questionnaire.

The Court rules on Plaintiffs' motion in limine #10, to exclude all evidence ... re: Kathleen Machado coaching, fabricating or conspiring with her children the allegation of sexual abuse set forth in the complaint. The motion is denied.

Plaintiff's counsel inform the Court that Father Thomas Doyle will not appear to testify in this case. (Motion in limine #2 of defendants Father Joseph Illo, Monsignor Richard Ryan, Bishop Stephen E. Blaire and the Roman Catholic Bishop of Stockton, a Corporation Sole, and plaintiffs' motion in limine #21)

The issue of the governance of the Church is deferred.

The Court, Counsel and courtroom staff move to Department 21 for jury selection. Sixty-three prospective jurors are sworn to answer questions regarding their qualifications to act as trial jurors.

Continued on page 2.

pg. 2 of 3-3-05 Minute Order
CV018440

Certain potential jurors are excused for hardships.

The Court reads a statement of the case and the witness list.

The potential jurors are instructed to complete a questionnaire in Department 41 after the lunch break and to return to Department 21 on March 4, 2005 at 10:00 A.M.

In the afternoon, 85 potential jurors are sworn to answer questions regarding their qualifications to act as trial jurors.

Certain potential jurors are excused for hardships.

The Court reads a statement of the case and the witness list.

The potential jurors are instructed to complete a questionnaire and to return to Department 21 on March 4, 2005 at 10:00 A.M.

Further Jury Trial is continued to March 4, 2005 at 10:00 A.M. in Department 21.

Court adjourns.

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a Corporation Sole

11
12 **SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN**
13

14 **KATHLEEN MACHADO as an individual**) **CASE NO. CV018440**
15 **and as Guardian Ad Litem for RACHEL**)
LOMAS and AMBER LOMAS,) **DEFENDANTS PROPOSED JURY**
16) **INSTRUCTIONS**
Plaintiffs,)
17)
vs.)
18)
FR. JOSEPH ILLO, FR. FRANCIS)
19 **JOSEPH aka FR. FRANCIS ARAKAL, FR.**)
RICHARD J. RYAN, BISHOP STEVEN)
20 **BLAIRE and THE DIOCESE OF**)
STOCKTON, et al.,)
21 **Defendants.**)

100. PRELIMINARY ADMONITIONS

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3 You have now been sworn as jurors in this case. I want to impress on you the seriousness
4 and importance of serving on a jury. Trial by jury is a fundamental right in California. The parties have a
5 right to a jury that is selected fairly, that comes to the case without bias, and that will attempt to reach a
6 fair verdict based on the evidence presented. Before we begin, I need to explain how you must conduct
7 yourselves during the trial. Do not allow anything that happens outside this courtroom to affect your
8 decision. During the trial do not talk about this case or the people involved in it with anyone, including
9 your family and friends. You may say you are on a jury and how long the trial may take, but that is all.
10 You must not even talk about the case with the other jurors until after I tell you that it is time for you to
11 decide the case.

12 During the trial you must not listen to anyone else talk about the case or the people involved
13 in the case. You must avoid any contact with the parties, the lawyers, the witnesses, and anyone else who
14 may have a connection to the case. If anyone tries to talk to you about this case, tell that person that you
15 cannot discuss it because you are a juror. If he or she keeps talking to you, simply walk away and report
16 the incident to me as soon as you can.

17 After the trial is over and I have released you from jury duty, you may discuss the case with
18 anyone, but are not required to do so.

19 During the trial, do not read, listen to, or watch any news reports about this case. You must
20 decide this case based only on the evidence presented in this trial. Nothing presented outside this
21 courtroom is evidence unless I specifically tell you it is.

22 Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or
23 other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone
24 to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event
25 involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see
26 or hear the same evidence at the same time. If you do need to view the scene during the trial, you will be
27 taken there as a group under proper supervision.

28 It is important that you keep an open mind throughout this trial. Evidence can only be
29 presented a piece at a time. Do not form or express an opinion about this case while the trial is going on.
30

1 You must not decide on a verdict until after you have heard all the evidence and have discussed it
2 thoroughly with your fellow jurors in your deliberations. When it is time to begin your deliberations,
3 you will meet in the jury room. You may discuss the case only in the jury room and only when all the
4 jurors are present.

5 Do not let bias, sympathy, prejudice, or public opinion influence your verdict.

6 You must decide what the facts are in this case. And, I repeat, your verdict must be based
7 only on the evidence that you hear or see in this courtroom.

8 At the end of the trial, I will explain the law that you must follow to reach your verdict. You
9 must follow the law as I explain it to you, even if you do not agree with the law.

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101. OVERVIEW OF TRIAL

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3 To assist you in your tasks as jurors, I will now explain how the trial will proceed.

4 KATHLEEN MACHADO filed this lawsuit. She is called a plaintiff. She seeks damages [or other
5 relief] from Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, St. Joseph's
6 Church and Bishop Steven Blaire, Fr. Francis Joseph who is called a defendant. Each plaintiff and each
7 defendant is called a party to the case.

8 First, each side may make an opening statement, but neither side is required to do so. An opening
9 statement is not evidence. It is simply an outline to help you understand what that party expects the
10 evidence will show. Also, because it is often difficult to give you the evidence in the order we would
11 prefer, the opening statement allows you to keep an overview of the case in mind during the presentation
12 of the evidence. You cannot use it to make any decisions in this case.

13 Next, the jury will start hearing the evidence. KATHLEEN MACHADO will present her evidence
14 first. When KATHLEEN MACHADO is finished, Roman Catholic Bishop of Stockton, Msgr Richard J.
15 Ryan, Fr. Joseph Illo; Fr. Francis Joseph and Bishop Steven Blaire will have an opportunity to present
16 their evidence.

17 Each witness will first be questioned by the side that asked the witness to testify. This is called direct
18 examination. Then the other side is permitted to question the witness. This is called cross-examination.

19 Documents or objects referred to during the trial are called exhibits. Exhibits will be given a number
20 and marked so they may be clearly identified. Exhibits are not evidence until I admit them into evidence.
21 You will be able to look at these exhibits during your deliberations.

22 There are many rules that govern whether something will be considered evidence in the trial. As one
23 side presents evidence, the other side has the right to object and to ask me to decide if the evidence is
24 permitted by the rules. Usually, I will decide immediately, but sometimes I may have to hear arguments
25 outside of your presence.

26 After the evidence has been presented, I will instruct you on the law that applies to the case and the
27 attorneys will make closing arguments. What the parties say in closing argument is not evidence. The
28 arguments are offered to help you understand the evidence and how the law applies to it.
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2 **102. TAKING NOTES DURING THE TRIAL**

3 You have been given notebooks and may take notes during the trial. Do not remove the notebooks
4 from the jury box at any time during the trial. You may take your notes into the jury room during
5 deliberations.

6 You should use your notes only to remind yourself of what happened during the trial. Do not let your
7 note-taking interfere with your ability to listen carefully to all the testimony and to watch the witnesses as
8 they testify. Nor should you allow your impression of a witness or other evidence to be influenced by
9 whether or not other jurors are taking notes. Your independent recollection of the evidence should
10 govern your verdict and you should not allow yourself to be influenced by the notes of other jurors if
11 those notes differ from what you remember.

12 [The court reporter is making a record of everything that is said. If during deliberations you have a
13 question about what the witness said, you should ask that the court reporter's records be read to you.
14 You must accept the court reporter's record as accurate.]

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103. MULTIPLE PARTIES

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3 There are 5 defendants in this trial. You should decide the case against each defendant separately
4 as if it were a separate lawsuit. Each defendant is entitled to separate consideration of his or her own
5 defenses. Unless I tell you otherwise, all instructions apply to each defendant

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3 **104. NON-PERSON PARTY**
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5 A corporation, Roman Catholic Bishop of Stockton, is a party in this lawsuit. Roman Catholic Bishop
6 of Stockton, a corporation sole is entitled to the same fair and impartial treatment that you would give to
7 an individual. You must decide this case with the same fairness that you would use if you were deciding
8 the case between individuals.

9 When I use words like "person" or "he" or "she" in these instructions to refer to a party, those
10 instructions also apply to Roman Catholic Bishop of Stockton, a corporation sole.
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106. EVIDENCE

Sworn testimony, documents, or anything else may be admitted into evidence. You must decide what the facts are in this case from the evidence you see or hear during the trial. You may not consider as evidence anything that you see or hear when court is not in session, even something done or said by one of the parties, attorneys, or witnesses.

What the attorneys say during the trial is not evidence. In their opening statements and closing arguments, the attorneys will talk to you about the law and the evidence. What the lawyers say may help you understand the law and the evidence, but their statements and arguments are not evidence.

The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You should not think that something is true just because an attorney's question suggests that it is true. However, the attorneys for both sides can agree that certain facts are true. This agreement is called a stipulation. No other proof is needed and you must accept those facts as true in this trial.

Each side has the right to object to evidence offered by the other side. If I do not agree with the objection, I will say it is overruled. If I overrule an objection, the witness will answer and you may consider the evidence. If I agree with the objection, I will say it is sustained. If I sustain an objection, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness has already answered, you must ignore the answer.

Sometimes an attorney may make a motion to strike testimony that you have heard. If I grant the motion, you must totally disregard that testimony. You must treat it as though it did not exist.

107. WITNESSES

A witness is a person who has knowledge related to this case. You will have to decide whether you believe each witness and how important each witness's testimony is to the case. You may believe all, part, or none of a witness's testimony.

In deciding whether to believe a witness's testimony, you may consider, among other factors, the following:

- (a) How well did the witness see, hear, or otherwise sense what he or she described in court?
- (b) How well did the witness remember and describe what happened?
- (c) How did the witness look, act, and speak while testifying?
- (d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?
- (e) What was the witness's attitude toward this case or about giving testimony?

Sometimes a witness may say something that is not consistent with something else he or she said. Sometimes different witnesses will give different versions of what happened. People often forget things or make mistakes in what they remember. Also, two people may see the same event but remember it differently. You may consider these differences, but do not decide that testimony is untrue just because it differs from other testimony.

However, if you decide that a witness has deliberately testified untruthfully about something important, you may choose not to believe anything that witness said. On the other hand, if you think the witness testified untruthfully about some things but told the truth about others, you may accept the part you think is true and ignore the rest.

Do not make any decision simply because there were more witnesses on one side than on the other. If you believe it is true, the testimony of a single witness is enough to prove a fact.

You must not be biased against any witness because of his or her race, sex, religion, occupation, sexual orientation, [or] national origin [or ___ (insert any other impermissible form of bias)___].

1 **200. OBLIGATION TO PROVE--MORE LIKELY TRUE THAN NOT TRUE**

2 _____
3 When I tell you that a party must prove something, I mean that the party must persuade you, by the
4 evidence presented in court, that what he or she is trying to prove is more likely to be true than not true.
5 This is sometimes referred to as "the burden of proof."

6 After weighing all of the evidence, if you cannot decide whether a party has satisfied the burden of
7 proof, you must conclude that the party did not prove that fact. You should consider all the evidence that
8 applies to that fact, no matter which party produced the evidence.

9 In criminal trials, the prosecution must prove facts showing that the defendant is guilty beyond a
10 reasonable doubt. But in civil trials, such as this one, the party who is required to prove a fact need only
11 prove that the fact is more likely to be true than not true.

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3 **202. DIRECT AND INDIRECT EVIDENCE**

4 Evidence can come in many forms. It can be testimony about what someone saw or heard or smelled.
5 It can be an exhibit admitted into evidence. It can be someone's opinion.

6 Some evidence proves a fact directly, such as testimony of a witness who saw a jet plane flying across
7 the sky. Some evidence proves a fact indirectly, such as testimony of a witness who saw only the white
8 trail that jet planes often leave. This indirect evidence is sometimes referred to as "circumstantial
9 evidence." In either instance, the witness's testimony is evidence that a jet plane flew across the sky.

10 As far as the law is concerned, it makes no difference whether evidence is direct or indirect. You may
11 choose to believe or disbelieve either kind. Whether it is direct or indirect, you should give every piece of
12 evidence whatever weight you think it deserves.
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1 **203. PARTY HAVING POWER TO PRODUCE BETTER EVIDENCE**

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3 You may consider the ability of each party to provide evidence. If a party provided weaker evidence
4 when it could have provided stronger evidence, you may distrust the weaker evidence.
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205. FAILURE TO EXPLAIN OR DENY EVIDENCE

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3 You may consider whether a party failed to explain or deny some unfavorable evidence. Failure to
4 explain or to deny unfavorable evidence may suggest that the evidence is true.
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206. EVIDENCE ADMITTED FOR LIMITED PURPOSE

During the trial, I explained to you that certain evidence was admitted for a limited purpose. You may consider that evidence only for the limited purpose that I described, and not for any other purpose.

207. EVIDENCE APPLICABLE TO ONE PARTY

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4 During the trial, I explained that certain evidence could be considered as to one or more parties but not
5 to every party. You may not consider that evidence as to any other party.
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208. DEPOSITION AS SUBSTANTIVE EVIDENCE

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During the trial, you heard testimony read from a deposition. A deposition is the testimony of a person taken before trial. At a deposition the person is sworn to tell the truth and is questioned by the attorneys. You must consider the deposition testimony that was read to you in the same way as you consider testimony given in court.

209. USE OF INTERROGATORIES OF A PARTY

Before trial, each party has the right to ask the other parties to answer written questions. These questions are called interrogatories. The answers are also in writing and are given under oath. You must consider the questions and answers that were read to you the same as if the questions and answers had been given in court.

210. REQUESTS FOR ADMISSIONS

Before trial, each party has the right to ask another party to admit in writing that certain matters are true. If the other party admits those matters, you must accept them as true. No further evidence is required to prove them.

[However, these matters must be considered true only as they apply to the party who admitted they were true.]

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3 **212. STATEMENTS OF A PARTY OPPONENT**
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5 A party may offer into evidence any oral or written statement made by an opposing party outside the
6 courtroom.

7 When you evaluate evidence of such a statement, you must consider these questions:

8 1. Do you believe that the party actually made the statement? If you do not believe that the party
9 made the statement, you may not consider the statement at all.

10 2. If you believe that the statement was made, do you believe it was reported accurately?

11 You should view testimony about an oral statement made by a party outside the courtroom with
12 caution.
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1 **215. EXERCISE OF A COMMUNICATION PRIVILEGE**

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3 People have a legal right not to disclose what they told their attorney in confidence because the law
4 considers this information privileged. People may exercise this privilege freely and without fear of penalty.
5 You must not use the fact that a witness exercised this privilege to decide whether he or she should be
6 believed. Indeed, you must not let it affect any of your decisions in this case.
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216. EXERCISE OF WITNESS' RIGHT NOT TO TESTIFY

[[Name of party] [Name of witness]] has exercised [his/her] legal right not to testify concerning certain matters. Do not draw any conclusions from the exercise of this right or let it affect any of your decisions in this case. A [[party] [witness]] may exercise this right freely and without fear of penalty.

1 **218. STATEMENTS MADE TO PHYSICIAN (PREVIOUSLY EXISTING CONDITION)**

2 _____
3 [Name of health-care provider] has testified that [name of patient] made statements to [him/her] about
4 [name of patient]'s medical history. These statements helped [name of health-care provider] diagnose the
5 patient's condition. You can use these statements to help you examine the basis of [name of health-care
6 provider]'s opinion. However, you cannot use them for any other purpose.

7 [However, a statement by [name of patient] to [name of health-care provider] of [his/her] current
8 medical condition may be considered as evidence of that medical condition.]

219. EXPERT-WITNESS TESTIMONY

During the trial you heard testimony from expert witnesses. The law allows an expert to state opinions about matters in his or her field of expertise even if he or she has not witnessed any of the events involved in the trial.

You do not have to accept an expert's opinion. As with any other witness, it is up to you to decide whether you believe the expert's testimony and choose to use it as a basis for your decision. You may believe all, part, or none of an expert's testimony. In deciding whether to believe an expert's testimony, you should consider:

1. The expert's training and experience;
2. The facts the expert relied on; and
3. The reasons for the expert's opinion.

1 **220. EXPERTS--QUESTIONS CONTAINING ASSUMED FACTS**
2

3 The law allows expert witnesses to be asked questions that are based on assumed facts. These are
4 sometimes called "hypothetical questions."

5 In determining the weight to give to the expert's opinion that is based on the assumed facts, you should
6 consider whether the assumed facts are true.
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221. CONFLICTING EXPERT TESTIMONY

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3 If the expert witnesses disagreed with one another, you should weigh each opinion against the others.
4 You should examine the reasons given for each opinion and the facts or other matters that each witness
5 relied on. You may also compare the experts' qualifications.
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3 **400. ESSENTIAL FACTUAL ELEMENTS**
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5 KATHLEEN MACHADO claims that she was harmed by Roman Catholic Bishop of Stockton,
6 Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire's negligence. To
7 establish this claim, KATHLEEN MACHADO must prove all of the following:

8 1. That Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis
9 Joseph and Bishop Steven Blaire were negligent;

10 2. That KATHLEEN MACHADO was harmed; and

11 3. That Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis
12 Joseph and Bishop Steven Blaire's negligence was a substantial factor in causing KATHLEEN
13 MACHADO's harm.

14 Just because KATHLEEN MACHADO was harmed does not, by itself, mean that Roman Catholic
15 Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire
16 is legally responsible for the harm.
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1 **401. BASIC STANDARD OF CARE**

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3 Negligence is the failure to use reasonable care to prevent harm to oneself or to others.

4 A person can be negligent by acting or by failing to act. A person is negligent if he or she does
5 something that a reasonably careful person would not do in the same situation or fails to do something
6 that a reasonably careful person would do in the same situation.

7 You must decide how a reasonably careful person would have acted in [KATHLEEN MACHADO
8 Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Francis Joseph, and Bishop Steven
9 Blaire]'s situation.

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2 **405. PLAINTIFF'S CONTRIBUTORY NEGLIGENCE**

3 Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo Fr. Francis Joseph and
4 Bishop Steven Blaire claims that KATHLEEN MACHADO's harm was caused in whole or in part by
5 KATHLEEN MACHADO's own negligence. To succeed on this claim, Roman Catholic Bishop of
6 Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire must
7 prove both of the following:

- 8 1. That KATHLEEN MACHADO was negligent; and
9 2. That KATHLEEN MACHADO's negligence was a substantial factor in causing her harm.

10 If Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Francis Joseph and Bishop Steven
11 Blaire proves the above, KATHLEEN MACHADO's damages are reduced by your determination of
12 the percentage of KATHLEEN MACHADO's responsibility. I will calculate the actual reduction.

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2 **406. APPORTIONMENT OF RESPONSIBILITY**
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4 More than one person's [[negligence] [fault]], [including KATHLEEN MACHADO's], may have
5 been a substantial factor in causing KATHLEEN MACHADO's harm. If so, you must decide how much
6 responsibility each person has by determining, on a percentage basis, the extent to which her [
7 [negligence] [fault]] contributed to causing the harm.
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430. CAUSATION: SUBSTANTIAL FACTOR

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3 A substantial factor in causing harm is a factor that a reasonable person would consider to have
4 contributed to the harm. It must be more than a remote or trivial factor. It does not have to be the only
5 cause of the harm.
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1 **1620. NEGLIGENCE INFLICTION OF EMOTIONAL DISTRESS-- DIRECT**
2 **VICTIM--ESSENTIAL FACTUAL ELEMENTS**

3
4 KATHLEEN MACHADO claims that Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan,
5 Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire's conduct caused them to suffer serious
6 emotional distress. To establish this claim, KATHLEEN MACHADO must prove all of the following:

7 1. That Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo and Bishop
8 Steven Blaire was negligent;

9 2. That KATHLEEN MACHADO suffered serious emotional distress; and

10 3. That Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis
11 Joseph and Bishop Steven Blaire's negligence was a substantial factor in causing KATHLEEN
12 MACHADO's serious emotional distress.

13 Emotional distress includes suffering, anguish, fright, horror, nervousness, grief, anxiety, worry, shock,
14 humiliation, and shame. Serious emotional distress exists if an ordinary, reasonable person would be
15 unable to cope with it.

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2 **1706. DEFINITION OF STATEMENT**

3 The word "statement" in these instructions refers to any form of communication or representation,
4 including spoken or written words [or] pictures [or] ___(insert audible or visual representations)___.

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1707. FACT VERSUS OPINION

For KATHLEEN MACHADO to recover, Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire's statement(s) must have been statements of fact, not opinion. A statement of fact is a statement that can be proved to be true or false. An opinion may be considered a statement of fact if the opinion suggests that facts exist.

In deciding this issue, you should consider whether the average [[reader] [listener]] would conclude from the language of the statement and its context that Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire was making a statement of fact.

3600. CONSPIRACY—ESSENTIAL FACTUAL ELEMENTS

KATHLEEN MACHADO claims that she was harmed by [name of co-conspirator]'s ___(insert tort theory)___ and that Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire is responsible for the harm because they were part of a conspiracy to commit ___(insert tort theory)___. A conspiracy is an agreement by two or more persons to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the conduct of the parties.

If you find that [name of co-conspirator] committed a ___(insert tort theory)___ that harmed KATHLEEN MACHADO, then you must determine whether Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire is also responsible for the harm. Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire is responsible if KATHLEEN MACHADO proves both of the following:

1. That Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire was aware that [name of co-conspirator] [and others] planned to ___(insert wrongful act)___; and

2. That Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire agreed with [name of co-conspirator] [and others] and intended that the ___(insert wrongful act)___ be committed.

Mere knowledge of a wrongful act without cooperation or an agreement to cooperate is insufficient to make Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire responsible for the harm.

A conspiracy may be inferred from circumstances, including the nature of the acts done, the relationships between the parties, and the interests of the alleged co-conspirators.

KATHLEEN MACHADO is not required to prove that Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire personally committed a wrongful act or that they knew all the details of the agreement or the identities of all the other participants.

3700. INTRODUCTION

A corporation is responsible for harm caused by the wrongful conduct of its employees while acting within the scope of their employment.

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1 **3701. TORT LIABILITY ASSERTED AGAINST PRINCIPAL-- ESSENTIAL FACTUAL**
2 **ELEMENTS**

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4 KATHLEEN MACHADO claims that she was harmed by [name of agent]'s ___ (insert tort theory,
5 e.g., "negligence")___.

6 KATHLEEN MACHADO also claims that Roman Catholic Bishop of Stockton, Msgr Richard J.
7 Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire is responsible for the harm because
8 [name of agent] was acting as their [[agent] [employee] [___ (insert other relationship, e.g.
9 "partner")___]] when the incident occurred.

10 If you find that [name of agent]'s ___ (insert tort theory)___ harmed KATHLEEN MACHADO, then
11 you must decide whether Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo,
12 Fr. Francis Joseph and Bishop Steven Blaire is responsible for the harm. Roman Catholic Bishop of
13 Stockton, Msgr Richard J. Ryan, and Bishop Steven Blaire is responsible if KATHLEEN MACHADO
14 proves the following:

15 1. That [name of agent] was Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph
16 Illo, Fr. Francis Joseph and Bishop Steven Blaire's [[agent] [employee] [___ (insert other
17 relationship)___]]; and

18 2. That [name of agent] was acting within the scope of their [[agency] [employment] [___ (insert
19 other relationship)___]] when they harmed KATHLEEN MACHADO.
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1 (g) The kind of work performed by [name of agent] does not require specialized or professional
2 skill;

3 (h) The services performed by [name of agent] were to be performed over a long period of time;
4 and

5 (i) Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph
6 and Bishop Steven Blaire and [name of agent] acted as if they had an employer-employee relationship.
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1 **3705. EXISTENCE OF "AGENCY" RELATIONSHIP DISPUTED**
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3 KATHLEEN MACHADO claims that [name of agent] was Roman Catholic Bishop of Stockton,
4 Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire's agent and that
5 Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and
6 Bishop Steven Blaire is therefore responsible for [name of agent]'s conduct.

7 If KATHLEEN MACHADO proves that Roman Catholic Bishop of Stockton, Msgr Richard J.
8 Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire gave [name of agent] authority to act
9 on their behalf, then [name of agent] was Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr.
10 Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire's agent. This authority may be shown by words
11 or may be implied by the parties' conduct. This authority cannot be shown by the words of [name of
12 agent] alone.
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3 **3720. SCOPE OF EMPLOYMENT**

4 KATHLEEN MACHADO must prove that [name of agent] was acting within the scope of her [

5 [employment] [authorization]] when KATHLEEN MACHADO was harmed.
6 Conduct is within the scope of [[employment] [authorization]] if:

7 (a) It is reasonably related to the kinds of tasks that the [[employee] [agent]] was employed to
8 perform; or

9 (b) It is reasonably foreseeable in light of the employer's business or the [[agent's] [employee's job]
10] responsibilities.
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1 **3722. SCOPE OF EMPLOYMENT--UNAUTHORIZED ACTS**
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3 An employee's unauthorized conduct may be within the scope of employment if [the conduct was
4 committed in the course of a series of acts authorized by the employer]

5 [An employee's wrongful or criminal conduct may be within the scope of employment even if it breaks
6 a company rule or does not benefit the employer.]

1 **3900. INTRODUCTION TO TORT DAMAGES-- LIABILITY CONTESTED**
2

3 If you decide that KATHLEEN MACHADO has proved her claim against Roman Catholic Bishop
4 of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire, you
5 also must decide how much money will reasonably compensate KATHLEEN MACHADO for the harm.
6 This compensation is called "damages."

7 The amount of damages must include an award for each item of harm that was caused by Roman
8 Catholic Bishop of Stockton, Msgr Richard J. Ryan Fr. Joseph Illo, Fr. Francis Joseph and Bishop
9 Steven Blaire's wrongful conduct, even if the particular harm could not have been anticipated.

10 KATHLEEN MACHADO does not have to prove the exact amount of damages that will provide
11 reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

12 [The following are the specific items of damages claimed by KATHLEEN MACHADO:]

13 ___(Insert applicable instructions on items of damage.)___
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1 **3902. ECONOMIC AND NONECONOMIC DAMAGES**

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3 The damages claimed by KATHLEEN MACHADO for the harm caused by Roman Catholic Bishop
4 of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire fall into
5 two categories called economic damages and non-economic damages. You will be asked on the verdict
6 form to state the two categories of damages separately.

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1 **3903. ITEMS OF ECONOMIC DAMAGE**

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3 The following are the specific items of economic damages claimed by KATHLEEN MACHADO:

4 _____ (Insert applicable instructions on items of economic damage.) _____
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3 3904. PRESENT CASH VALUE
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6 If you decide that KATHLEEN MACHADO's harm includes future [economic] damages for then the
7 amount of those future damages must be reduced to their present cash value. This is necessary because
8 money received now will, through investment, grow to a larger amount in the future.

9 To find present cash value, you must determine the amount of money that, if reasonably invested
10 today, will provide KATHLEEN MACHADO with the amount of her future damages.

11 [You may consider expert testimony in determining the present cash value of future [economic]
12 damages.]

13 [You will be provided with a table to help you calculate the present cash value.]
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1 **3905A. PHYSICAL PAIN, MENTAL SUFFERING, AND EMOTIONAL DISTRESS**
2 **(NONECONOMIC DAMAGE)**

3 _____
4 ___(Insert number, e.g., "1.")___ [Past] [and] [future] [[physical pain] [mental suffering] [loss of
5 enjoyment of life][disfigurement][physical impairment][inconvenience][grief][anxiety][humiliation]
6 [emotional distress ___(insert other damages)___]].

7 [To recover for future ___(insert item of pain and suffering)___, KATHLEEN MACHADO must
8 prove that she is reasonably certain to suffer that harm.]

9 No fixed standard exists for deciding the amount of these damages. You must use your judgment to
10 decide a reasonable amount based on the evidence and your common sense.

11 [Your award for noneconomic damages should not be reduced to present cash value.]
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3924. NO PUNITIVE DAMAGES

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3 You must not include in your award any damages to punish or make an example of Roman Catholic
4 Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire.
5 Such damages would be punitive damages, and they cannot be a part of your verdict. You must award
6 only the damages that fairly compensate KATHLEEN MACHADO for her loss.
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1 **3925. ARGUMENTS OF COUNSEL NOT EVIDENCE OF DAMAGES**

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3 The arguments of the attorneys are not evidence of damages. Your award must be based on your
4 reasoned judgment applied to the testimony of the witnesses and the other evidence that has been
5 admitted during trial.

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1 **3930. MITIGATION OF DAMAGES (PERSONAL INJURY)**

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3 If you decide Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis
4 Joseph and Bishop Steven Blaire is responsible for the original harm, KATHLEEN MACHADO is not
5 entitled to recover damages for harm that Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan,
6 Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire proves KATHLEEN MACHADO could
7 have avoided with reasonable efforts or expenditures.

8 You should consider the reasonableness of KATHLEEN MACHADO's efforts in light of the
9 circumstances facing her at the time, including her ability to make the efforts or expenditures without
10 undue risk or hardship.

11 If KATHLEEN MACHADO made reasonable efforts to avoid harm, then your award should include
12 reasonable amounts that she spent for this purpose.

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Special Instruction Number 1

Allegations of sexual abuse are not within the scope of employment or agency of a Roman Catholic Priest.

Authority

Rita M. v. Roman Catholic Archbishop (1986) 187 Cal.App.3d 1453, 1461

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN}

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

DOCUMENT(S) SERVED: DEFENDANTS PROPOSED JURY INSTRUCTIONS

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

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

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

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

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

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

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

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

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

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
2 Served and executed on February 14, 2005, at Stockton, California.

3 Sheri Sigman
4 SHERI SIGMAN
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Filed

MAR 3 2005

ROSA JUNQUEIRO, CLERK

By

Charlene Gray
DEPUTY

Stipulated Statement of Case

Plaintiff's KEM, AL, & RL bring this action

Plaintiffs Kathleen Machado, Amber Lomas,
and Rachel Lomas have brought a lawsuit
against defendants Fr. Joseph Ulla, Fr. Francis
Joseph Archel, Msgr. Richard Ryan, Bishop Stephen
Blaise, and the Roman Catholic Diocese of Stockton,
alleging battery, sexual battery, infliction
of emotional distress, and defamation.

The defendants deny the allegations.

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN
Vladimir F. Kozina, Esq., SB No. 95422
2453 Grand Canal Blvd., Second Floor
Stockton, California 95207-8253
Telephone: (209) 477-3833 Fax: (209) 473-4818

cy
Filed MAR 1 2005
ROSA JUNGUENCO, CLERK
By Charlene Gray
DEPUTY

Neumiller & Beardslee
Paul N. Balestracci, Esq. SR No. 83987
Post Office Box 20
Stockton, CA 95201-3020
Telephone: (209) 948-8200 Facsimile: (209) 948-4910

Attorneys for: Bishop Stephen Blaire, Msgr. Richard Ryan, Fr. Joseph Illo,
Roman Catholic Bishop of Stockton, a corporation sole, St. Joseph's Church

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

KATHLEEN MACHADO INDIVIDUALLY AND AS) No. CV 018440
GUARDIAN AD LITEM FOR RACHEL LOMAS AND)
AMBER LOMAS)

Plaintiff,

vs.

DECLARATION OF
VLADIMIR F. KOZINA IN SUPPORT OF
FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
BISHOP STEVEN BLAIRE, AND
ROMAN CATHOLIC BISHOP OF STOCKTON, A
CORPORATION SOLE'S MOTION IN LIMINE
TO EXCLUDE INTERNAL GOVERNANCE
EVIDENCE

FR. JOSEPH ILLO, FR. FRANCIS JOSEPH, A.K.A.
FR. FRANCIS ARAKAL, FR. RICHARD J. RYAN,
BISHOP STEVEN BLAIRE, AND THE DIOCESE OF
STOCKTON, ET AL,
Defendants.

DATE: FEBRUARY 22, 2005
TIME: 1:30 PM
DEPT: 41

I, Vladimir F. Kozina, declare:

That if called to testify, I could competently state the following:

That I make the above declaration of my own knowledge, except as to those matters set forth on
information and belief, and those I believe to be true.

That plaintiff's counsel has claimed on Page 2 Line 19-20 the following: "Here, defendants
explain their interpretations of Canon Law, but the Canons themselves are nowhere to be found ..."

That I expressly told plaintiff's counsel that the Canons can be found on the internet by simply
going to Google and typing in "Canon Law"

1 That on March 1, 2005, as soon as I received plaintiff's faxed opposition, did in fact go to the
2 Google search engine site and typed in "Canon Law". That there were numerous pages that
3 immediately were found containing the text of the Canon Law of the Latin Rite of the Catholic Church.

4 That an example of the sites is as follows:

- 5 • http://www.vatican.va/archive/ENG1104/_INDEX.HTM
- 6 • <http://www.ourladywarriors.org/canon/>
- 7 • <http://www.intratext.com/X/ENG0017.HTM>
- 8 • <http://www.monksodoration.org/canonlaw.html>
- 9 • http://www.deacons.net/Canon_Law/Frame_Index.htm

10 That the plaintiff's representations concerning the unavailability of the text of Canon Law are
11 suspect, unless plaintiff has no access to a computer or the internet.

12 That the text of the cited Canons is available to anyone who so desires.

13 That the declaration of Monsignor Ryan, attached to Defendant's Motion To Exclude Evidence
14 Of Matters Within The Internal Governance Of The Church clearly sets forth the basis for internal
15 governance of the Latin Rite of the Catholic Church based on the Code of Canon Law.

16 That with respect to the investigations undertaken and testified to by Bishop Blaire and
17 Monsignor Ryan, the court is requested to review the process under Canons 1717-1728 in the attached
18 Exhibit A, Pages 22-24. That said conduct is strictly within the confines of the internal governance of
19 the Latin Rite of the Catholic Church, more commonly known as the Roman Catholic Church.

20 That the introductory text, the Introductory and Ecclesiastical Norms of the Code of Canon Law
21 are set forth in Exhibit A. That I am informed and believe that the translation into English from the
22 Latin is true and accurate as the text was obtained directly from the website of the Vatican.

23 That permitting inquiry into, comment upon, or any evidence of the canonical investigations,
24 including the preliminary investigation would constitute a violation of the First Amendment of the
25 United States Constitution by virtue of invading matters that are outside the jurisdiction of the civil
26 courts and that cannot be resolved under neutral principals of law as it would necessarily inquire into
27 matters that are solely within the ecclesiastical province.

28

1 That I make the above declaration of my own knowledge, except as to those matters set forth on
2 information and belief, and those I believe to be true.

3 That I make this declaration under penalty of perjury under the laws of the State of California.

4 That this declaration is executed in Stockton on the 1st day of March, 2005

5 Dated: 3-1-05

MAYALL, HURLEY, KNUITSEN, SMITH & GREEN

6 By 
Vladimir F. Kozina

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