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3-15-05 TO 4-28-05

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8 408-286-5150
9 Attorneys for Plaintiffs

05 APR 28 PM 12:50
HOGAN & LINDSAY, CLERK
BY _____
DEPUTY

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

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

No. CV 018440
PROOF OF SERVICE

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

24 On April 27, 2005, I caused to be served the foregoing :

- 25 1. **Points and Authorities in Support of Motion to Tax Costs;**
- 26 2. **Notice of Motion to Tax Costs.**

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

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

5 Michael Coughlan, Esq.
6 Coughlan & O'Rourke, LLP
7 3031 W. March Lane, Suite 210 West
8 Stockton, CA 95219

9 Vladimir F. Kozina, Esq.
10 Mayall, Hurley, Knutsen, Smith & Green
11 2453 Grand Canal Blvd., 2nd Floor
12 Stockton, CA 95207-8253

13 Executed on 27 April 2005, at San Jose, California.

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

16 
17 PAMELA WILSON

FILED

MAY 23 PM 12:50
JESSA S. JENNINGS, O. CLERK

BY _____
DEPUTY

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830.30 QW5A2EPWA

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

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

No. CV 018440
 NOTICE OF MOTION
 TO TAX COSTS
 DATE: MAY 24, 2005
 TIME: 9:00 A.M.
 PLACE: DEPARTMENT 41

22 **TO DEFENDANT FR. JOSEPH ILLO AND TO HIS ATTORNEYS OF RECORD:**

23 **NOTICE IS HEREBY GIVEN** that as soon thereafter as the matter may be heard, in
 24 Department 41 of this court plaintiffs, Kathleen Machado, Amber Lomas and Rachel Lomas will
 25 move the court for an order taxing the costs of this action under Rule 870(b)(1) of the California
 26 Rules of Court as follows:
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By striking from defendant Fr. Joseph Illo's memorandum of costs, filed herein the following items:

1. Item Nos. 1a and 1c, filing fees in the amount of \$25.30 and \$36.30, for filing defendant's motion strike the punitive damages and defendants motion to continue the trial (respectively) on the grounds that these fees are not allowable under Code of Civil Procedure section 1033.5. The motion to strike punitive damages was with regard to the Defendants Roman Catholic Bishops of Stockton, **not** to defendant Fr. Illo, pursuant to C.C.P. 425.14. The motion to continue was filed and then withdrawn by defense counsel, Kozina, for his convenience after he substituted in as attorney of record less then two months before trial, yet after realizing he had a calender conflict. Both filing fees are not reasonably necessary to the litigation.

2. Item No. 4a, the deposition of Dr. Roger Katz in the sum of \$489.05, on the grounds that this item is not allowable under Code of Civil Procedure 1033.5 since Dr. Katz admitted in his deposition testimony that he was not sufficiently familiar with the pending litigation and was not prepared to give testimony on the date of trial, and was subsequently withdrawn by the defense and therefore the deposition was not reasonably necessary for the conduct of the litigation.

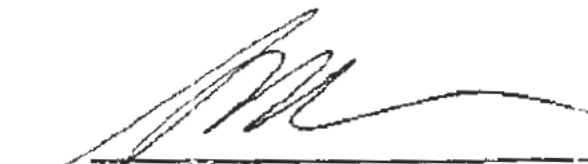
3. Item No. 8a. ordinary witness fees for Diane Stephen in the amount of \$351.00, Donna Yarnall \$55.00, Ed Tobias \$55.00, Norman Schmidt, \$35.00, Diane Stephens \$70.00, as not being an allowable cost as these witnesses did not "actually attend" the trial and testify.

1 4. Item No. 8b, expert witness fees in the sum of \$1525.00, on the ground that this item is
 2 not allowable under Code of Civil Procedure section 998 since the offers to compromise
 3 proffered in this matter were token offers and made in bad faith with no reasonable prospect of
 4 acceptance by plaintiffs.

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 6 5. Item No. 13, "Other Costs" the Jury Fee Questionnaire Copies, are not allowable costs
 7 as they were not reasonably necessary to the conduct of the litigation, but rather a
 8 request/demand made by the defendant and a convenience to the defendant's defense of this
 9 matter, further each party made their own copies of the questionnaire at each parties own costs.
 10 In short, the copying of the questioner is not reasonably necessary to the conduct of the litigation
 11 and should be disallowed.

12
 13 This motion will be based on this notice of motion, on the declaration of Anthony
 14 Boskovich and the memorandum of points and authorities served and filed herewith, on the
 15 records and file herein, and on such evidence as may be presented at the hearing of the motion.

16
 17 Dated: 4/27/05

18
 19 
 20 _____
 21 George MacKoul
 22 Attorney for plaintiffs

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

FILED
03 APR 28 PM 2:50
ROSA BUNQUER CLERK
BY _____
DEPUTY

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12 **COUNTY OF SAN JOAQUIN**
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14 KATHLEEN MACHADO, individually and
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JOSEPH a.k.a. FATHER FRANCIS ARAKAL;
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BLAIRE; THE DIOCESE OF STOCKTON;
19 DOES 1 through 100,
Defendants.

No. CV 018440
POINTS AND
AUTHORITIES IN
SUPPORT OF MOTION
TO TAX COSTS

20
21 **INTRODUCTION**
22

23 Defendant, Fr. Joseph Illo filed a Memorandum of Costs in this case that clearly contains
24 items which are not allowable as costs.
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Law Offices of Anthony Boskovich 28 North First Street, 6th Floor, San Jose, CA 95113 (408) 286-5150

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2
3 **ARGUMENT**

4 The right to recover costs of suit is determined entirely by statute. (Code Civ. Proc. §§
5 1032, et seq.) “It is axiomatic that the right to recover costs is purely statutory, and, in the
6 absence of an authorizing statute, no costs can be recovered by either party.” (*Garcia v. Hyster*
7 *Company* (1994) 28 Cal.App.4th 724, 732 [34 Cal.Rptr.2d 283, 287]) Costs which are merely
8 convenient to trial preparation are not allowed, (Code Civ. Proc. § 1033.5, subd. (c)(2); *Nelson v.*
9 *Anderson* (1999) 72 Cal.App.4th 111, 129 [84 Cal.Rptr.2d 753, 764]), and the court has the power
10 to disallow even costs allowable as a matter of right if they were not reasonably necessary, or to
11 reduce any unreasonable cost to a reasonable amount. (*Perko’s Enterprises, Inc. v. RRNS Enterprises*
12 (1992) 4 Cal.App.4th 238, 245 [5 Cal.Rptr.2d 470, 474]) Here, defendant Gregory Groetsema ?
13 has requested many items of costs not authorized by statute, and others that are unreasonable,
14 and they must be disallowed.

15
16 **A. FILING FEES FOR DEFENDANT’S MOTION TO STRIKE THE**
17 **PUNITIVE DAMAGES ALLEGATION RESULTED IN A STIPULATION**
18 **SIGNED BY BOTH PARTIES. IN ADDITION, THE FILING FEE FOR**
19 **THE MOTION FOR A CONTINUANCE WAS FILED AND**
20 **WITHDRAWN, TO ACCOMMODATE DEFENSE COUNSELS**
21 **CALENDER.**

22 Although filing fees as a general rule are recoverable costs, the trial court retains
23 discretion to disallow filing fees that are not reasonably necessary to the litigation. (*Perko’s*
24 *Enterprises, Inc. v. RRNS Enterprises* (1992) 4 Cal.App.4th 238, 245 [5 Cal.Rptr.2d 470, 474]) Here,
25 the filing fees for the motion to strike the punitive damages allegations in the complaint was done
26 on behalf of the Roman Catholic Bishops of Stockton, not the party who filed this cost bill, Fr.
27 Joseph Illo, pursuant to C.C.P. 425.14 as it applies to Religious Organizations. The motion was
28 not reasonably necessary for conduct of the litigation, as it applies to the defense of Fr. Joseph
Illo. The court file speaks for itself on this issue. Further, all parties stipulated to the motion.
Therefore the filing fee of \$25.30 listed under Item 1a. of Fr. Illo’s cost bill should be disallowed.

1 Further, the \$36.30 filing fee for Defense Counsel Kozina's motion to continue the trial
2 should also be disallowed. Mr. Kozina became new counsel less than two months prior to the
3 original trial date, and filed a substitution of attorney knowing that he had a conflict in his
4 calendar, with regard to the first trial date. The details are set forth in Attorney Boskovich's
5 opposition to the new trial motion. In any event, defendant withdrew their motion to continue
6 the trial before the hearing, and therefore the filing fee of \$36.30 (Item No. 1c of Fr. Illo's cost
7 bill) should be disallowed as it was not reasonably necessary to the conduct of the litigation.

8
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10 **B. THE CHARGE FOR THE DEPOSITION TRANSCRIPT OF DR.
11 RICHARD KATZ SHOULD BE DISALLOWED BECAUSE DR. KATZ
12 WAS NOT TRUTHFUL IN HIS EXPERT WITNESS DECLARATION,
13 AND HE WAS SUBSEQUENTLY WITHDRAWN AS AN EXPERT
14 WITNESS.**

15 Defendant lists as a cost the sum of \$489.05 as a cost for the transcript of Dr. Roger Katz.
16 Here, the cost is not allowable under Code of Civil Procedure 1033.5 since Dr. Katz admitted in
17 his deposition testimony that he was not sufficiently familiar with the pending litigation and was
18 not prepared to give testimony on the date of trial, and was subsequently withdrawn by the
19 defense and therefore the deposition was not reasonably necessary for the conduct of the
20 litigation.

21 For these reasons, these costs should be disallowed.

22 **C. ORDINARY WITNESS FEES ARE ALLOWED ONLY TO THOSE WITNESSES
23 WHO ACTUALLY ATTEND AND TESTIFY AT TRIAL.**

24 Recovery of ordinary witness fees are limited by the provision of Government Code
25 section 68093. (Code Civ. Proc. § 1033.5, subd. (a)(7).) Section 68093 provides for witness fees
26 for those witnesses who actually attend and testify at trial.

27 As the court record will show, Diane Stephens (Attachment #8-ordinary witnesses fees
28 listed in defendants cost bill in the amount of \$351.00), Donna Yarnall (\$55.00), Ed Tobias

1 (\$55.00), Norman Schmidt, (\$35.00), and again, Diane Stephens (\$70.00) did not “actually
2 attend” the trial and testify, therefore the costs are not allowed.

3 Accordingly these costs should be disallowed.
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6 **D. NO COSTS SHOULD BE ALLOWED FOR EXPERT WITNESSES**
7 **BECAUSE DEFENDANT FR. JOSEPH ILLO’S OFFER PURSUANT TO**
8 **CODE OF CIVIL PROCEDURE SECTION 998 WAS MERELY A**
9 **TOKEN AMOUNT WITH NO REASONABLE PROBABILITY THAT**
10 **PLAINTIFFS WOULD ACCEPT.**

11 Defendant claims \$1,525.00 for expert witnesses pursuant to Code of Civil Procedure
12 section 998. This request is totally inappropriate since defendant’s offer to compromise for
13 \$100,000.00 on the very eve of trial was essentially an offer of a dismissal with a waiver of costs.
14 This offer was not reasonable, and was certainly not reasonably expected to result in a settlement
15 of the matter, and therefore the expert witness fees are not allowable.

16 On the eve of trial, defendants served an offer to compromise pursuant to Code of Civil
17 Procedure section 998 on plaintiffs for \$100,000.00 which required an all or nothing acceptance.
18 Under Code of Civil Procedure section 998, where an offer made by a defendant is not accepted
19 and the plaintiff fails to obtain a more favorable judgment, the court, in its discretion, may
20 require the plaintiff to pay defendant’s reasonable costs of expert witnesses, but is not required to
21 do so. (Code Civ. Proc. § 998, subd. (c)(1)) This offer was not reasonable, and the expert witness
22 fees must be disallowed.

23 In *Wear v. Calderon* (1981) 121 Cal.App.3d 818, 821 [175 Cal.Rptr. 566], to accomplish
24 the legislative purpose of encouraging settlements, the court read into Code of Civil Procedure
25 section 998 a requirement of good faith. “In other words, the pretrial offer of settlement
26 required under section 998 must be realistically reasonable under the circumstances of the
27 particular case.” (*Ibid.*) A token or nominal offer usually does not satisfy this good faith
28 requirement.

1 A plaintiff may not reasonably be expected to accept a token or nominal offer
2 from any defendant exposed to this magnitude of liability unless it is absolutely
3 clear that no reasonable possibility exists that the defendant will be held liable. If
4 that truly is the situation, then a plaintiff is likely to dismiss his action without any
5 inducement whatsoever. But if there is some reasonable possibility, however
6 slight, that a particular defendant will be held liable, there is practically no chance
7 that a plaintiff will accept a token or nominal offer of settlement from that
8 defendant in view of the current cost of preparing a case for trial.

9 (*Wear v. Calderon, supra*, 121 Cal.App.3d at 821, fn. omitted [175 Cal.Rptr. 566, fn. omitted])

10 In *Elrod v. Oregon Cummins Diesel, Inc.* (1987) 195 Cal.App.3d 692 [241 Cal.Rptr. 108], the
11 court accepted the good faith requirement and discussed when an offer is made in good faith.
12 “Whether a section 998 offer is reasonable must be determined by looking at circumstances
13 when the offer was made. (Citation)” (*Id.* at p. 699 [241 Cal.Rptr. 108]) Whether the offer was
14 made in good faith and was reasonable is left to the sound discretion of the trial court. (*Ibid.*)

15 Here, there was no reasonable possibility that the offer of \$100,000.00 would be
16 accepted. First, the offer was nominal and no more than a token. This case involved allegations
17 of sexual abuse, allegation of defamation, and allegation of conspiracy to cover up the reports of
18 sexual abuse by members of the clergy. The jury was allowed to decide the issue of punitive
19 damages against defendant Ilo. The defendants had no reasonable expectation that the
20 plaintiff’s would accept this amount of money given the time and expenses put into the case for
21 over 3 years and the reasonable likelihood that a verdict could easily exceed the sum being
22 offered.

23 In upholding the trial court’s finding that the offer was not reasonable, the court noted
24 that although liability was tenuous, given the enormous exposure, the trial court could find
25 defendant had no reasonable expectation that its offer would be accepted. (*Id.* at 63 [169
26 Cal.Rptr. 66]) Such is the case here.

27 It is true, however, that “[e]ven a modest or ‘token’ offer may be reasonable if an action
28 is completely lacking in merit. (Citation)” (*Nelson v. Anderson* (1999) 72 Cal.App.4th 111, 134 [84
29 Cal.Rptr.2d 753]) But this is not a case like *Culbertson v. R.D. Werner Co., Inc.* (1987) 190
30 Cal.App.3d 704 [235 Cal.Rptr. 510], in which pretrial discovery revealed the lack of merit in
31 plaintiff’s case. In *Culbertson*, plaintiff sued the manufacturer of a ladder for injuries when he fell
32 after the ladder slid. Pretrial discovery revealed that the ladder had been modified after it left the

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1 manufacturer and cast doubt on the extent and cause of plaintiff's injuries as he was seen
2 engaging in strenuous activities and had a pre-existing back injury. (*Id.* at 706- 707 [235
3 Cal.Rptr. 510]) Here, the offer was made almost three years after the lawsuit was filed and
4 virtually all of the discovery was complete. Defendant knew that plaintiffs had an expert Dr.
5 Sonnie Weedn who conducted objective testing, and further testified that no deception, was
6 apparent in both Amber and Rachel's allegations of sexual abuse and emotional distress claims.
7 Therefore, the question of liability remained close.

8 For these reasons, this court must not allow defendant's expert witness costs.

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11 **E. ITEM NO. 13 COPIES OF THE JURY QUESTIONNAIRES SHOULD BE**
12 **DISALLOWED**

13 In Item No. 13, "Other Costs" the Jury Fee Questionnaire Copies, are not allowable
14 costs as they were not reasonably necessary to the conduct of the litigation, but rather a
15 request/demand made by the defendant and a convenience to the defendant's defense of this
16 matter. Further each party made their own copies of the questionnaire at each parties' own costs.
17 In short, the copying of the questionnaire is not reasonably necessary to the conduct of the
18 litigation and should be disallowed.

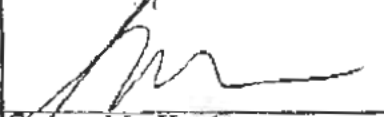
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CONCLUSION

For the reasons stated above, the costs identified in the notice to this motion should be disallowed.

Dated: 4/27/08


George MacKoul
Attorney for plaintiffs

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8 408-286-5150

9 Attorneys for Plaintiffs

MAR 27 2005 10:50
DEPUTY CLERK
BY _____

13030 SUSAN BOUILL

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

14 KATHLEEN MACHADO, individually and
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18 FATHER RICHARD RYAN; BISHOP STEVEN
BLAIRE; THE DIOCESE OF STOCKTON;
19 DOES 1 through 100,
Defendants.

No. CV 018440

PLAINTIFFS' MEMORANDUM
OF POINTS AND AUTHORITIES
IN SUPPORT OF MOTION FOR
NEW TRIAL

Date: 17 May 2005
Time: 9:00 A.M.
Department: 41
Judge: Hon. Elizabeth Humphreys

22 **INTRODUCTION**

24 After a month long jury trial in which there were 3 plaintiffs, 5 defendants, and 18 total
25 witnesses, the jury came back after extremely limited closing argument with a verdict on a 26 page
26 verdict form in favor of Amber Lomas for \$20,000 in future psychiatric expenses, and no award for

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1 emotional distress damages. As will be shown, this award of damages is inadequate as a matter of
2 law requiring a new trial. Additionally, plaintiffs were wrongly precluded from presenting the
3 testimony of Nate Baker and were unreasonably limited in the amount of time to prepare for and
4 conduct voir dire, as well as present their closing argument to the jury. A clear miscarriage of justice
5 has occurred, and a new trial must be granted.

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7
8 **ARGUMENT**

9
10 **A. NEW TRIAL MUST BE GRANTED BECAUSE THE DAMAGES**
11 **AWARDED TO AMBER LOMAS ARE INADEQUATE AS A MATTER OF**
12 **LAW.**

13 The jury in this matter awarded Amber Lomas \$20,000 for future economic loss, including
14 medical expenses, on her claim for negligent infliction of emotional distress. (See Special Verdict
15 Form, p. 25, § K(2)(b)) The jury awarded nothing for past or future non-economic loss. (*Id.* at p. 25,
16 §K(2)(c) and (d)) As a matter of law, these damages are inadequate, and this court must grant a new
17 trial, or, in the alternative, issue an additur.

18 Code of Civil Procedure section 657, subdivision (5) provides that a trial court may grant a
19 new trial on the ground of “[e]xcessive or inadequate damages”. Section 657 also provides: “A new
20 trial shall not be granted ... upon the ground of excessive or inadequate damages, unless after
21 weighing the evidence the court is convinced from the entire record, including reasonable inferences
22 therefrom, that the court or jury clearly should have reached a different verdict or decision.” A
23 motion for new trial is a matter within the trial court's discretion. (*Jiminez v. Sears, Roebuck & Company*
24 (1971) 4 Cal.3d 379, 387 [93 Cal.Rptr. 769]) In ruling on a motion for new trial the court may
25 disbelieve witnesses, reweigh the evidence, and draw reasonable inferences therefrom contrary to
26 those of the trier of fact. (*County of Los Angeles v. Southern California Edison Company* (2003) 112
27 Cal.App.4th 1108, 1120 [5 Cal.Rptr.3d 575, 584])

1 Here, the testimony was unrefuted that Amber Lomas needed approximately \$20,000 in
2 future psychiatric treatment, and that she had been profoundly impacted by what had happened to
3 her. Her only item of future special damages, as testified to by Dr. Weedn, was future psychiatric
4 expenses. When Amber testified, it was clear that she was extremely disturbed by what had
5 happened on 11 September 2001 at the hands of Fathers Ilo and Arakal. Where mental suffering
6 is the principle element of damages, courts have routinely held that failure to award for emotional
7 distress are "inadequate as a matter of law." (*Capelouto v. Kaiser Foundation Hospitals* (1972) 7 Cal.3d
8 889, 893 [103 Cal.Rptr. 856, 859], and cases cited therein; *Wilson v. R. D. Werner Company* (1980) 108
9 Cal.App.3d 878, 883 [166 Cal.Rptr. 797, 800]; *Gallentine v. Richardson* (1967) 248 Cal.App.2d 152,
10 155 [56 Cal.Rptr. 237, 239] ["... where damage is proven as a proximate result of defendant's
11 negligence, the exact amount of plaintiff's special damages are awarded, and no award is made for
12 the detriment suffered through pain, suffering, inconvenience, shock or mental suffering. In such
13 situation we hold an award limited strictly to the special damages is inadequate as a matter of law."])

14 Additionally, Amber Lomas is entitled to a new trial on the claim of intentional infliction of
15 emotional distress. A limited retrial is allowable only "so long as that issue is sufficiently distinct and
16 severable from the others that a limited retrial would not result in an injustice. (Citation) And, where
17 special verdicts on one matter do not depend on inconclusive special verdicts on another matter, the
18 remaining matter can properly be determined on retrial. (Citation)" (*Valentine v. Baxter Healthcare*
19 *Corporation* (1999) 68 Cal.App.4th 1467, 1478 [81 Cal.Rptr.2d 252, 260]) Here, Amber's emotional
20 distress cannot be separated from the two causes of action for infliction of emotional distress, and
21 therefore the only proper course is to award a new trial on both causes of action.

22 There can be no question that the damages awarded Amber Lomas for her emotional distress
23 are inadequate as a matter of law. The motion for new trial must be granted.

24 //
25 //
26 //

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B. RACHEL AND AMBER LOMAS MUST BE GRANTED ANEW TRIAL BECAUSE THIS COURT'S RULING REGARDING THE TESTIMONY OF LAW ENFORCEMENT AND NATE BAKER IN PARTICULAR PREVENTED THEM FROM HAVING A FAIR TRIAL.

Prior to trial, defendant Arakal brought a motion in limine to preclude the testimony of Stanislaus County Deputy District Attorney Nate Baker. In its ruling, not entirely understood by counsel, this court ruled that there would be no testimony regarding failure to prosecute, but that testimony regarding the criminal investigation would be admitted. (See Declaration of Anthony Boskovich) As a result, Stanislaus County Deputy Sheriff Donald Bali was allowed to testify that a criminal investigation was undertaken, what was done in the investigation, and that a letter was written to the Diocese regarding Father Arakal when the investigation was closed. The implication was clear that no criminal charges had been levied against Father Arakal, and that he had been reinstated into full ministry. The further clear and unmistakable implication of this testimony was that law enforcement had determined that no molestation had occurred. But that in fact was demonstrably false. Nate Baker was ready, willing, and able to testify that he believed that an inappropriate touching had occurred, but that a jury might be confused by the conduct of Kathleen Machado. (See Declaration of Anthony Boskovich) In fact, that is what most likely occurred here because the jury was allowed to reach the incorrect inference that law enforcement did not believe that the touching had occurred. A new trial must be granted to correct this miscarriage of justice.

A new trial must be granted if the verdict results in a miscarriage of justice. (*Brown v. Guy* (1956) 144 Cal.App.2d 659, 661 [301 P.2d 413, 414]) "The trial court has the power to grant a new trial even though the evidence might justify a verdict. (Citation) It is the trial judge's duty to set aside the jury's verdict whenever his [or her] conscience is impressed with the injustice thereof. (Citation)" (*Moore v. City & County of San Francisco* (1970) 5 Cal.App.3d 728, 738, 85 Cal.Rptr. 281, 286 - 87]) This can be done either on the ground of irregularities of the proceedings, (Code Civ. Proc. § 657, subd. (1); *Develop-Amatic Engineering v. Republic Mortgage Company* (1970) 12 Cal.App.3d 143, 150-51 [91 Cal.Rptr. 193, 197-98]), or an error in law as a result of an erroneous evidentiary ruling.

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1 (Code Civ. Proc. § 657, subd. (7); *Richard v. Scott* (1978) 79 Cal.App.3d 57, 63, fn. 2 [144 Cal.Rptr.
2 672, 676, fn. 2])

3 In essence, Father Arakal was allowed to have the jury hear all of the information that law
4 enforcement had that was favorable to him, and left the jury with the impression that the authorities
5 thought that there was no basis for the girls' claims, which simply is not true. If the jury was allowed
6 to hear that charges were not filed and that a letter was written by a detective with an explanation,
7 then they should have been allowed to hear the entire story. In fact, due process required it.

8 "The right to such a hearing is one of 'the rudiments of fair play', (Citation), assured
9 to every litigant by the Fourteenth Amendment as a minimal requirement." (Citation) The reasonable opportunity to meet and rebut the evidence produced by
10 his opponent is generally recognized as one of the essentials of these minimal
11 requirements, (Citations), and the right of cross-examination has frequently been
12 referred to as another. (Citations) "The classic statement of the rule applicable to
13 such proceedings is found in *Interstate Commerce Commission v. Louisville & Nashville
14 Railroad Company* (1913) 227 U.S. 88 [33 S.Ct. 185, 57 L.Ed. at page 434]: "All parties
15 must be fully apprised of the evidence submitted or to be considered, and must be
16 given opportunity to cross-examine witnesses, to inspect documents, and to offer
17 evidence in explanation or rebuttal. In no other way can a party maintain its rights
18 or make its defense."
19 (*Kaiser Company, Inc. v. Industrial Accident Commission* (1952) 109 Cal.App.2d 54, 59 [240 P.2d 57, 60];
20 cited with approval, *Rucker v. Workers' Compensation Appeals Board* (2000) 82 Cal.App.4th 151, 158 [97
21 Cal.Rptr.2d 852, 857])

22 "The search for truth is not served but hindered by the concealment of relevant and material
23 evidence. Although our system of administering ... justice is adversary in nature, a trial is not a game.
24 Its ultimate goal is the ascertainment of truth, and where furtherance of the adversary system comes
25 in conflict with the ultimate goal, the adversary system must give way to reasonable restraints
26 designed to further that goal...." (*In re Ferguson* (1971) 5 Cal.3d 525, 531 [96 Cal.Rptr. 594]) "... Our
27 courts are not gambling halls but forums for the discovery of the truth." (*People v. Geiger* (1984) 35
28 Cal.3d 510, 520, [199 Cal.Rptr. 45]) Defendants cannot have it both ways. Either the criminal
investigation should have come in - in its entirety - or have been excluded - in its entirety. There
can be no middle ground.

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1 In sum, exactly what plaintiffs predicted would happen in their opposition to Father Arakal's
2 motion in limine came to pass, and this, as predicted, resulted in a miscarriage of justice. Rachel and
3 Amber Lomas must be granted a new trial.

4
5
6 **C. A NEW TRIAL MUST BE GRANTED BECAUSE COUNSEL WERE
7 GIVEN INADEQUATE TIME TO PREPARE FOR JURY SELECTION,
8 AND WERE GIVEN INADEQUATE TIME IN WHICH TO CONDUCT
9 VOIR DIRE.**

10 Over the objection of plaintiffs, this Court ordered that a jury questionnaire be utilized. As
11 a result, at 7 P.M. on the day before jury selection was to begin, plaintiffs were confronted with
12 approximately 2000 pages of jury questionnaires to be reviewed and categorized by early the next
13 morning. (See Declaration of Anthony Boskovich) Counsel had no idea of the order that
14 prospective jurors would be placed in the box, and when those people were placed in the box and
15 counsel was attempting to locate the relevant questionnaires this Court instructed plaintiff's counsel
16 to inquire. Virtually no time was allotted to allow counsel to review the questionnaires prior to
17 examination of the prospective jurors. Voir dire was limited to half an hour, of which at least 5 to
18 seven minutes was utilized by the court itself in an attempt to rehabilitate 2 jurors, and because of
19 the timing, voir dire by plaintiffs counsel was conducted substantially without the benefit of the
20 questionnaires. (See Declaration of Anthony Boskovich) The voir dire process was objected to by
21 the parties, and the objection was overruled by the trial court. (See Declaration of Anthony
22 Boskovich) As a result, plaintiffs were denied a fair trial because they were denied their right to
23 conduct adequate voir dire, and a new trial should be granted on the grounds of irregularity in the
24 proceedings and error in law. (Code Civ. Proc § 657, subds. (1), (7))

25 Litigants are entitled to an unbiased and unprejudiced jury. (U.S. Const., Amend. VII; Cal.
26 Const., art. I, § 16; *Hasson v. Ford Motor Company* (1982) 32 Cal.3d 388, 416 [185 Cal.Rptr. 654];
27 *Weathers v. Kaiser Foundation Hospitals* (1971) 5 Cal.3d 98, 110 [95 Cal.Rptr. 516, 523-24]) The

1 guarantee includes the right to 12 impartial jurors. (*Smith v. Covell* (1980) 100 Cal.App.3d 947, 955
2 [161 Cal.Rptr. 377]; *Andrews v. County of Orange* (1982) 130 Cal.App.3d 944, 960 [182 Cal.Rptr. 176,
3 185], disapproved on other grounds, *People v. Nesler* (1997) 16 Cal.4th 561, 582, fn. 5 [66 Cal.Rptr.2d
4 454, 468, fn. 5]) Voir dire is a critical part of the process to guarantee a fair and impartial jury.

5 Voir dire is governed by statute. Code of Civil Procedure section 222.5 provides in relevant
6 part:

7 To select a fair and impartial jury in civil jury trials, the trial judge shall
8 examine the prospective jurors. Upon completion of the judge's initial examination,
9 counsel for each party shall have the right to examine, by oral and direct questioning,
10 any of the prospective jurors in order to enable counsel to intelligently exercise both
11 peremptory challenges and challenges for cause. During any examination conducted
12 by counsel for the parties, the trial judge should permit liberal and probing
13 examination calculated to discover bias or prejudice with regard to the circumstances
14 of the particular case. The fact that a topic has been included in the judge's
15 examination should not preclude additional nonrepetitive or nonduplicative
16 questioning in the same area by counsel.

17 The scope of the examination conducted by counsel shall be within
18 reasonable limits prescribed by the trial judge in the judge's sound discretion. In
19 exercising his or her sound discretion as to the form and subject matter of voir dire
20 questions, the trial judge should consider, among other criteria, any unique or
21 complex elements, legal or factual, in the case and the individual responses or
22 conduct of jurors which may evince attitudes inconsistent with suitability to serve as
23 a fair and impartial juror in the particular case. Specific unreasonable or arbitrary
24 time limits shall not be imposed.

25 A court should not arbitrarily or unreasonably refuse to submit reasonable written
26 questionnaires, the contents of which are determined by the court in its sound
27 discretion, when requested by counsel.

28 (Emphasis added)

As the statute makes clear, the primary purpose of voir dire is to select a fair and impartial
jury. (*Ibid.*; *Kelly v. Trans Globe Travel Bureau, Inc.* (1976) 60 Cal.App.3d 195, 203 [131 Cal.rptr. 330,
333]) It permits counsel to intelligently exercise both peremptory challenges and challenges for
cause. (See *Bly-Magee v. Budget Rent-A-Car Corporation* (1994) 24 Cal.App.4th 318, 324 [29 Cal.Rptr.2d
330, 333]) Juror questionnaires are a part of voir dire. (*Bellas v. Superior Court (People)* (2000) 85
Cal.App.4th 636, 639, fn. 2 [102 Cal.Rptr.2d 380, 382, fn. 2])

1 Here, the parties, and plaintiffs in particular, were denied their right to effective voir dire in
2 several respects. First, they were confronted with approximately 2000 pages of juror questionnaires
3 at 7 P.M. on the night before voir dire was to begin the next morning. No reasonable person could
4 be expected review and digest these complex questionnaires in such a short period of time, and in
5 fact plaintiffs' counsel were unable to do so. The parties reported to the courtroom, and were given
6 a list of who would be put in the jury box immediately before questioning was to begin, and, again,
7 no reasonable person or attorney would have had time to review these questionnaires and prepare
8 for the individual voir dire. Most importantly, this court set an arbitrary limit of 30 minutes for voir
9 dire in express violation of the statutory provision, and then proceeded to take approximately one
10 third of plaintiffs time by questioning prospective jurors when it appeared that there might be a
11 challenge for cause. Thus, plaintiffs already minimal time was reduced by one third, and therefore
12 plaintiffs were further hindered. Finally, the time limits that were imposed were absolute; when
13 counsel attempted to question a person already in the box when more jurors were added, juror
14 McMahon, the request was refused. As a result, Mr. McMahon was left on the jury because
15 plaintiffs did not exercise a peremptory challenge on him, but certainly would have if counsel had
16 been allowed sufficient time to review the questionnaires, order them prior to voir dire, and allowed
17 a reasonable time in which to question. (See Declaration of Anthony Boskovich) As it turned out,
18 Mr. McMahon became the presiding juror and voted against plaintiffs on virtually every issue.

19 Because of this, plaintiffs were denied their right to conduct adequate voir dire, and thus were
20 denied the right to select a fair and impartial jury. A new trial must be ordered in this matter.

21
22
23 **D. A NEW TRIAL MUST BE GRANTED BECAUSE PLAINTIFFS WERE**
24 **GIVEN AN INADEQUATE AMOUNT OF TIME TO GIVE THEIR**
25 **CLOSING ARGUMENT.**

26 In a trial that lasted a month and in which there were three plaintiffs and five defendants, in
27 which there were complicated instructions read to a relatively uneducated jury, and in which there

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1 was a 26 page special verdict form, plaintiffs were allowed a total of one hour¹ in which to present
2 a closing argument that had to explain complicated facts and law. For the parties that had the
3 burden of proof, this was clearly inadequate, and clearly resulted in a miscarriage of justice requiring
4 a new trial.

5 Each party has the absolute right to make a closing argument to the jury. (*Shippy v. Peninsula*
6 *Rapid Transit Company* (1925) 197 Cal. 290, 294 [240 P. 785, 787]) Although the trial court has
7 discretion to limit the time to argue, (*Ackerman v. Griggs* (1930) 109 Cal.App. 365, 369 [293 P. 115,
8 117]), this discretion must be reasonably exercised. (*People v. Green* (1893) 99 Cal. 564, 567 [34 P.
9 231, 232])

10 Here, plaintiffs had to explain a series of events that occurred over a period of over a year;
11 from the initial relationship with Father Illo, the meetings with Father Arakal, the three home visits
12 that resulted in a molestation, the events leading up to the September 11th confrontation, the
13 confrontation itself and the meeting afterward with Yvonne McLoughlin present, the subsequent
14 attempt to force the Machado family out of the parish with the assistance of the Diocese, the failure
15 of the Diocese to implement its policies regarding child abuse, the eventual reporting of the molest
16 to the diocese, and the eventual response. Plaintiffs needed to explain the concept of grooming, the
17 psychological scarring and lack of deception on the part of the girls, and the tremendous emotional
18 distress the girls continue to endure. Plaintiffs needed to explain the complicated relationship
19 between Kathleen Machado and Father Illo, and the impact their faith had on describing the
20 relationship as well as the perhaps unwarranted trust plaintiffs had in Catholic priest. Plaintiffs
21 needed to explain damages. Plaintiffs also need to explain a complex verdict form that was only
22 settled right before argument. Despite this, the court only allowed plaintiffs a single hour to argue,
23 and plaintiffs did their best to apportion the time. But, as the argument clearly showed, an hour was
24

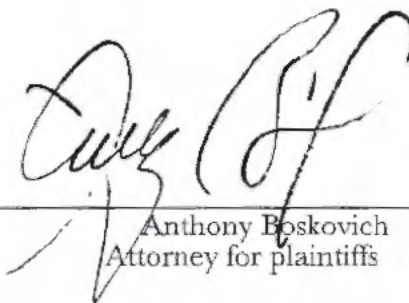
25 ¹Defendants, who had no burden of proof, were allowed one hour and fifteen minutes,
26 which was the norm during the trial. Despite the unity of their positions, defendants were
27 uniformly given two bites at the apple, and in fact “tag-teamed” plaintiffs in their cross-
28 examination.

1 simply not enough time for plaintiffs to explain what needed to be explained to the jury in order to
2 get a fair trial. For example, less than five minutes could be allocated on how to calculate damages,
3 and no time at all could be allocated to explaining the verdict form. This put plaintiffs at a
4 tremendous disadvantage, and resulted in a miscarriage of justice.

5 In sum, the facts of the case were convoluted, and there were many witnesses and several
6 issues. The instructions were complicated, and the verdict form was lengthy. No attorney could
7 reasonably submit both the closing argument and rebuttal in this short period of time. The facts of
8 *Green, supra*, mirror this case, and in *Green, supra*, it can only be presumed that the jury instructions
9 were not nearly so lengthy or complex, and it is certain that the jury did not have to deal with a 26
10 page verdict form. There can be no question that by unduly restricting plaintiffs' right to a
11 reasonable amount of time to present a closing argument, that plaintiffs were denied a fair trial.
12 And, as made clear, the remedy for undue restriction on the length of closing argument is a new trial.
13 (*Id.* at 565 [34 P. at 231])

14 The motion for new trial must be granted.

15
16 Dated: 27 April 2005

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Anthony Boskovich
Attorney for plaintiffs

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

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

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

FILED
05 APR 23 PM 12:50
ROSA JUNQUEIRO, CLERK
BY _____
DEPUTY

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

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

No. CV 018440
PROOF OF SERVICE

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

24 On April 27, 2005, I caused to be served the foregoing :

- 25 **1. Plaintiffs' Points and Authorities in Support of Motion for New Trial;**
- 26 **2. Declaration of Anthony Boskovich in Support of Motion for New Trial**

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

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

5 Michael Coughlan, Esq.
6 Coughlan & O'Rourke, LLP
7 3031 W. March Lane, Suite 210 West
8 Stockton, CA 95219

9 Vladimir F. Kozina, Esq.
10 Mayall, Hurley, Knutsen, Smith & Green
11 2453 Grand Canal Blvd., 2nd Floor
12 Stockton, CA 95207-8253

13 Executed on 27 April 2005, at San Jose, California.

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

16 
17 PAMELA WILSON
18
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28

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6 28 N. First Street, 6th Floor
San Jose, California 95113-1210

8 408-286-5150

9 Attorneys for Plaintiffs

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

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

16 v.

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

No. CV 018440

DECLARATION OF ANTHONY
BOSKOVICH IN SUPPORT OF
MOTION FOR NEW TRIAL

Date: 17 May 2005

Time: 9:00 A.M.

Department: 41

Judge: Hon. Elizabeth Humphreys

22 Anthony Boskovich declares:

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

FILED

05 APR 23 PM 12:50

ROSALIND DEIRO, CLERK

BY _____
DEPUTY

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

1 2. At the trial in this matter, I intended to call as a witness Nate Baker, who is a Stanislaus
2 County Deputy District Attorney. Mr. Baker was the attorney assigned to the investigation of the
3 molestation of the girls by Father Arakal.

4
5 3. Mr. Baker was going to testify that there was sufficient evidence to believe that a
6 molestation or inappropriate touching had occurred, but that he believed that Kathleen Machado's
7 actions might confuse a jury. Mr. Baker would testify that he did not prosecute for this reason. This
8 opinion is memorialized in a document that was produced in discovery by a court order, but is not
9 being attached to this declaration because it involves allegations of sexual abuse of a minor that was
10 ordered produced by the Stanislaus County Superior Court with severe restrictions. Defendants
11 have this document, and it will be produced to the court at the hearing on this matter. This
12 testimony was the subject of a motion in limine by defendant Arakal to preclude the testimony of Mr.
13 Baker.

14
15 4. This court issued an oral ruling granting Father Arakal's ruling that stated that the fact
16 that there was a criminal investigation was admissible, but the decision not to prosecute was not. As
17 a result, Stanislaus County Deputy Sheriff Don Bali was allowed to testify, but Mr. Baker was
18 precluded from testifying because he could add nothing other than that he was present at the
19 interview.

20
21 5. Over plaintiffs' objection, a jury questionnaire was utilized in this case. As a result of the
22 projected length of the case, approximately one hundred jurors were asked to complete the
23 questionnaires. Counsel for defendants agreed that they would take control of the questionnaires
24 for purposes of copying.

1 6. I received the copies of the questionnaires at approximately 7 P.M. the day before voir
2 dire was set to begin. These questionnaires, in the possession of the court, consisted of approximately
3 2000 pages.

4
5 7. I reviewed the questionnaires until approximately 4:00 A.M., and appeared at court to
6 commence voir dire at 10:00 A.M. At no time did anybody from the court inform me or other
7 counsel that the list of the prospective jurors was available which included the order in which they
8 would be seated. As a result, I was only able to review approximately one half of the questionnaires
9 before voir dire was set to commence, and was not fully prepared to inquire.

10
11 8. Prior to voir dire commencing, Judge Humphreys instructed us that plaintiffs would be
12 allowed a total of 30 minutes for voir dire on the initial 18 jurors seated, and defendants were given
13 a similar restriction. Prior to voir dire commencing, counsel for defendants vigorously objected to
14 the time allotted for voir dire, and I concurred and explained my concern that the time allotted was
15 insufficient given that we had only just received the questionnaires and did not know the order the
16 prospective jurors would be seated. The trial judge explained that the list had been available and
17 that the time was adequate, and was more time than had been allotted in the Michael Jackson trial..

18
19 9. In the courtroom, the list of prospective jurors and the order in which they would be
20 seated was given to me as the jurors were being called and seated. During that time I attempted to
21 locate the individual questionnaires, which I had stacked in alphabetical order in a stack
22 approximately 12 to 15 inches high, and asked for a second to review them. I was given almost no
23 time to review them, in my recollection less than a minute, before I was asked to begin my inquiry.
24 Because of this, I was not fully prepared to inquire in my voir dire, and was essentially denied the
25 benefit of much of the information in the questionnaires because of the lack of time that had been
26 given to review them.

1 10. During voir dire, I was immediately confronted with prospective juror number 1, Mr.
2 Gillaspy, who was clearly hostile and who had vigorously attempted to be excused for cause the prior
3 day. Mr. Gillaspy indicated that he would not pay attention during the trial and would flip a coin
4 to make a decision, and the trial judge attempted to rehabilitate for several minutes of my half hour
5 time. Mr. Gillaspy was excused.
6

7 11. I then questioned prospective juror number 2, who stated that she did not believe that
8 she could find against a priest or bishop, and the court spent approximately 5 to 7 minutes
9 attempting to rehabilitate her. Although her body language and tone clearly indicted that she could
10 not be fair, she reluctantly agreed to try to be fair. Because of this, I was required to use one of my
11 peremptory challenges on this juror over my request that she be excused for cause, which was
12 denied.
13

14 12. In all, I would estimate that the court used 10 minutes of plaintiffs' voir dire time with
15 these two jurors, and that time was included in my time for voir dire. In other words, plaintiffs were
16 allowed only approximately 20 minutes for voir dire questions.
17

18 13. During the process, I attempted to question juror McMahon, who had been seated as
19 one of the first 18 and who eventually became the presiding juror and voted against plaintiffs on
20 virtually every issue, after a new round of jurors had been seated. The trial judge refused to allow
21 me to do so.
22

23 14. I was particularly prejudiced in the voir dire process because I had to question first, and
24 had no time to review the questionnaires before standing up to conduct voir dire. As a result, I was
25 required to exercise a peremptory challenge on juror number 2 instead of a challenge for cause, and
26 was unable to intelligently exercise my peremptory challenges. Had I been given more time to
27

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1 review the questionnaires prior to voir dire, and had I been given more time to inquire, I would
2 definitely have exercised my peremptory challenges differently. For example, I would definitely have
3 exercised a peremptory on juror Mr. McMahon, who eventually became the presiding juror in this
4 matter and consistently voted against plaintiffs.

5
6 15. Near the close of the evidence, the trial judge indicated that plaintiffs would be allowed
7 a total of one hour for closing argument, and the defendants would be allowed a total of one hour
8 and fifteen minutes. All counsel, including me, indicated to the court that this time was insufficient
9 given the number of parties and witnesses, the issues involved, the instructions, and the length of the
10 special verdict form. As I recall it, the trial judge expressed concern regarding the schedule and she
11 definitely did not permit us additional time.

12
13 16. During closing argument, because of the time constraints I did not have time to argue
14 the amount of damages for more than 3 to 4 minutes, and we had no time to go over the instructions
15 or 26 page verdict form with the jurors. I definitely needed more time in which to argue, and I
16 certainly needed more time in which to make an adequate argument to the jury in this complex case.

17
18 I declare under penalty of perjury under the laws of the State of California that the foregoing is true
19 and correct.

20
21 Dated: 27 April 2005

22
23 
24 _____
25 Anthony Boskovich

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

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

~~FILED~~
05 APR 29 11:41
ROSA J. HERRERA, CLERK
BY *[Signature]* DEPUTY

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

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

No. CV 018440
PROOF OF SERVICE

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

24 On April 15, 2005, I caused to be served the foregoing :

- 25 **1. PLAINTIFF'S MEMORANDUM OF COSTS;**
- 26 **2. NOTICE OF INTENTION TO MOVE FOR NEW TRIAL;**

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

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

5 Michael Coughlan, Esq.
6 Coughlan & O'Rourke, LLP
7 3031 W. March Lane, Suite 210 West
8 Stockton, CA 95219

9 Vladimir F. Kozina, Esq.
10 Mayall, Hurley, Knutsen, Smith & Green
11 2453 Grand Canal Blvd., 2nd Floor
12 Stockton, CA 95207-8253

13 Executed on ²¹~~15~~ April 2005, at San Jose, California.

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

16 
17 PAMELA WILSON
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Filed APR 22, 2005
ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

KATHLEEN MACHADO, et al
Plaintiffs

**NOTICE OF HEARING FOR
MOTION FOR NEW TRIAL**

vs

Case No. CV018440

FATHER JOSEPH ILLO, et al
Defendants

To: George J. MacKoul
SABBAH & MacKOUL
49 Locust Street
Falmouth, MA 02540

Additional address attached.

Notice is hereby given, that on April 18, 2005, George J. MacKoul and Anthony Boskovich, counsel for the Plaintiff, filed a Notice of Intention to Move for New Trial.

Please be advised that said Motion has been set for hearing on:

Tuesday, May 17, 2005 at 9:00 A.M. in Department 41.

Dated: April 22, 2005

Charlene Gray
Charlene Gray, Courtroom Clerk

DECLARATION:

I, the undersigned, declare that I am a Deputy Clerk of the Superior Court of the County of San Joaquin, State of California, and not a party to the action, and that on April 22, 2005, I served a copy of the above notice on each of the above named attorneys by depositing each copy in the Post Office at Stockton, California, properly enclosed in an envelope and properly addressed with proper postage thereon.

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

Dated: April 22, 2005


Charlene Gray
Charlene Gray, Courtroom Clerk

Additional addresses for Notice of Hearing for Motion for New Trial
CV018440

Anthony Boskovich
LAW OFFICES OF ANTHONY BOSKOVICH
28 N. First Street, 6th Floor
San Jose, CA 95113-1210

Vladimir Kozina
MAYALL, HURLEY, KNUTSEN, SMITH & GREEN
2453 Grand Canal Boulevard, 2nd Floor
Stockton, CA 95207-8253

-Michael D. Coughlan
ATTORNEY AT LAW
3031 W. March Lane, Suite 210 West
Stockton, CA 95219

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Anthony Boskovich, No. 121198 Law Offices of Anthony Boskovich 28 N. First Street, 6th Floor San Jose, California 95113-1210 TELEPHONE NO.: 408-286-5150 FAX NO.: ATTORNEY FOR (Name): Plaintiffs	FOR COURT USE ONLY <div style="text-align: center;">  </div>
INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: San Joaquin Superior Court	
PLAINTIFF: Kathleen Machado, et al. DEFENDANT: Joseph Illo, et al.	
MEMORANDUM OF COSTS (SUMMARY)	CASE NUMBER: CV018440

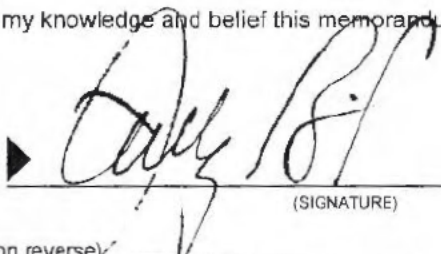
The following costs are requested:

	TOTALS
1. Filing and motion fees	1. \$ 608.15
2. Jury fees	2. \$ 4,508.28
3. Jury food and lodging	3. \$
4. Deposition costs	4. \$ 17,181.22
5. Service of process	5. \$ 690.00
6. Attachment expenses	6. \$
7. Surety bond premiums	7. \$
8. Witness fees	8. \$ 558.20
9. Court-ordered transcripts	9. \$
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	10. \$
11. Models, blowups, and photocopies of exhibits	11. \$
12. Court reporter fees as established by statute	12. \$
13. Other	13. \$
TOTAL COSTS	\$ 23,545.85

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: April 15, 2005

Anthony Boskovich
(TYPE OR PRINT NAME)


(SIGNATURE)

(Proof of service on reverse)

MEMORANDUM OF COSTS (SUMMARY)

SHORT TITLE: Machado, et al. v. Illo, et al.

CASE NUMBER:

CV018440

PROOF OF MAILING PERSONAL DELIVERY

1. At the time of mailing or personal delivery, I was at least 18 years of age and **not a party** to this legal action.
2. My residence or business address is (*specify*): SEE ATTACHED PROOF OF SERVICE
3. I mailed or personally delivered a copy of the *Memorandum of Costs (Summary)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope AND
 - (a) **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served:
 - (b) Address on envelope:

 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:

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

Date:

SEE ATTACHED PROOF OF SERVICE

.....
(TYPE OR PRINT NAME)

.....
(SIGNATURE OF DECLARANT)

SHORT TITLE: Machado, et al. v. Illo, et al.	CASE NUMBER: CV018440
--	--------------------------

MEMORANDUM OF COSTS (WORKSHEET)

1. Filing and motion fees

	<u>Paper filed</u>	<u>Filing fee</u>
a. <u>Complaint</u>	\$	195.00
b. <u>Motions</u>	\$	360.30
c. <u>Fax Filing Fee</u>	\$	52.85
d. _____	\$	_____
e. _____	\$	_____
f. _____	\$	_____

g. Information about additional filing and motion fees is contained in Attachment 1g.

TOTAL 1. \$ 608.15

2. Jury fees

	<u>Date</u>	<u>Fee & mileage</u>
a. <u>3/28/05</u>	\$	4,308.28
b. <u>1/28/05</u>	\$	200.00
c. _____	\$	_____
d. _____	\$	_____

e. Information about additional jury fees is contained in Attachment 2e.

TOTAL 2. \$ 4,508.28

3. Juror food: \$ _____ and lodging: \$ _____

TOTAL 3. \$ _____

4. Deposition costs

	<u>Name of deponent</u>	<u>Taking</u>	<u>Transcribing</u>	<u>Travel</u>	<u>Video-taping</u>	<u>Subtotals</u>
a.	<u>Roger Katz</u>	\$ 1,220.45	\$	\$ 200.00	\$	\$ 1,420.45
b.	<u>Francis Arakal</u>	\$ 969.65	\$	\$ 211.00	\$	\$ 1,180.65
c.	<u>Steven Blaire</u>	\$ 1,988.85	\$	\$ 301.00	\$	\$ 2,289.85
d.	<u>Yvonne McLaughlin</u>	\$	\$ 1,212.84	\$ 485.83	\$	\$ 1,698.67

e. Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4. \$ 17,181.22

(Continued on reverse)

5. Service of process

	<u>Name of person served</u>	<u>Public officer</u>	<u>Registered process</u>	<u>Publication</u>	<u>Other (specify)</u>
a.	<u>Yvonne McLaughlin</u>	\$ _____	\$ _____	\$ _____	\$ _____ 60.00
b.	<u>Roger Katz</u>	\$ _____	\$ _____	\$ _____	\$ _____ 60.00
c.	<u>Detective Bali</u>	\$ <u>150.00</u>	\$ _____	\$ _____	\$ _____ 60.00

d. Information about additional costs for service of process is contained in Attachment 5d.

TOTAL 5. \$ 690.00

6. Attachment expenses (specify): 6. \$

7. Surety bond premiums (itemize bonds and amounts): 7. \$

8. a. Ordinary witness fees

	<u>Name of witness</u>	<u>Daily fee</u>	<u>Mileage</u>		<u>Total</u>
(1)	<u>Yvonne McLaughlin</u>	<u>1.00</u> days at <u>55.0</u> \$/day	_____ miles at _____ ¢/mile	....	\$ _____ 55.00
(2)	<u>Roger Katz</u>	<u>1.00</u> days at <u>55.0</u> \$/day	_____ miles at _____ ¢/mile	....	\$ _____ 55.00
(3)	<u>Mary Mullins</u>	<u>1.00</u> days at <u>55.0</u> \$/day	_____ miles at _____ ¢/mile	....	\$ _____ 55.00
(4)	<u>Anna Lopez</u>	<u>1.00</u> days at <u>55.0</u> \$/day	_____ miles at _____ ¢/mile	....	\$ _____ 55.00
(5)	<u>Elaine Shields</u>	<u>1.00</u> days at <u>55.0</u> \$/day	_____ miles at _____ ¢/mile	....	\$ _____ 55.00

(6) Information about additional ordinary witness fees is contained in Attachment 8a(6).

SUBTOTAL 8a. \$ 558.20

SHORT TITLE: Machado, et al. v. Illo, et al.

CASE NUMBER:
CV018440

MEMORANDUM OF COSTS (WORKSHEET) (Continued)

8. b. Expert fees (per Code of Civil Procedure section 998)

<u>Name of witness</u>	<u>Fee</u>
(1) _____	_____ hours at \$ _____ /hr \$ _____
(2) _____	_____ hours at \$ _____ /hr \$ _____
(3) _____	_____ hours at \$ _____ /hr \$ _____
(4) _____	_____ hours at \$ _____ /hr \$ _____

(5) Information about additional expert witness fees is contained in Attachment 8b(5).

SUBTOTAL 8b. \$

c. Court-ordered expert fees

<u>Name of witness</u>	<u>Fee</u>
(1) _____	_____ hours at \$ _____ /hr \$ _____
(2) _____	_____ hours at \$ _____ /hr \$ _____

(3) Information about additional court-ordered expert witness fees is contained in Attachment 8c(3).

SUBTOTAL 8c. \$

TOTAL (8a, 8b, & 8c) 8. \$

9. Court-ordered transcripts (specify): 9. \$

10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required): 10. \$

11. Models, blowups, and photocopies of exhibits (specify): 11. \$

12. Court reporter fees (as established by statute)

a. (Name of reporter): Fees: \$

b. (Name of reporter): Fees: \$

c. Information about additional court reporter fees is contained in Attachment 12c.

TOTAL 12. \$

13. Other (specify): 13. \$

TOTAL COSTS \$ 23,545.85

MEMORANDUM OF COSTS (WORKSHEET) (Continued)

1	Attachment 5d	
2	Anna Lopez	\$60.00
3	Elaine Shields	\$60.00
4	Eva Kurtzman	\$60.00
5	Mary Mullins	\$60.00
6	Deana Watson	\$60.00
7	Owen Kummerle	\$60.00
8	Total	\$360.00

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11 Attachment 8a(6)

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13	Eva Kurtzman	\$55.00
14	Detective Don Bali	\$55.00
15	Deana Watson	\$55.00
16	Owen Kummerle	\$55.00
17	Owen Kummerle	\$63.20
18	Total	\$283.20

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MEMORANDUM OF COSTS (WORKSHEET) (Continued)

	4. Deposition costs (continued)					
	Name of deponent	Taking	Transcribing	Travel	Video- taping	Subtotals
1						
2						
3	Rachel Lomas	\$	\$ 554.85	\$ 211.00	\$	\$ 765.85
4	Amber Lomas	\$	\$ 393.07	\$ 211.00	\$	\$ 604.07
5	Richard Ryan	\$ 1,836.75	\$	\$ 90.00	\$	\$ 1,926.75
6	Anna Lopez	\$	\$ 89.75	\$ 195.83	\$	\$ 285.58
7	Kathleen Machado	\$	\$ 1,289.10	\$ 311.00	\$	\$ 1,600.10
8	Deanna Watson	\$	\$ 479.57	\$ 90.00	\$	\$ 569.57
9	Owen Kummerle	\$ 904.27	\$	\$ 90.00	\$	\$ 994.27
10	Richard Sipe	\$	\$ 597.41	\$ 110.00	\$	\$ 707.41
11	Diane Stephens	\$	\$ 246.70	\$ 110.00	\$	\$ 356.70
12	Detective Bali	\$	\$ 252.00	\$ 110.00	\$	\$ 362.00
13	Sonnee Weedn	\$	\$ 764.45	\$ 110.00	\$	\$ 874.45
14	Mary Mullins	\$ 1,349.02	\$	\$ 195.83	\$	\$ 1,544.85
15		\$	\$	\$	\$	\$
16		\$	\$	\$	\$	\$
17		\$	\$	\$	\$	\$
18		\$	\$	\$	\$	\$
19		\$	\$	\$	\$	\$
20		\$	\$	\$	\$	\$
21		\$	\$	\$	\$	\$
22		\$	\$	\$	\$	\$
23		\$	\$	\$	\$	\$
24		\$	\$	\$	\$	\$
25		\$	\$	\$	\$	\$

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

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

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

FILED
05 APR 18 PM 12:00
ROSA J. JORDAN, CLERK
BY _____
DEPUTY

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

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

No. CV 018440
NOTICE OF INTENTION TO
MOVE FOR NEW TRIAL

22 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

24 **PLEASE TAKE NOTICE THAT** plaintiffs Kathleen Machado, Rachel Lomas, and
25 Amber Lomas intend to move the Court to set aside the judgment entered on 4 April 2005, on the
26 jury verdict in this action, and to grant a new trial.
27

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

1 This motion will be heard at a time and place to be set by the Court pursuant to Code of
2 Civil Procedure section 661.

3 This motion will be made on each and all of the following grounds which materially affected
4 the substantial rights of the moving parties and prevented a fair trial:

- 5
- 6 (1) Irregularity in the proceedings of the Court, (Code Civ. Proc. § 657, subd. (1));
- 7 (2) Irregularity in the proceedings of the jury, (Code Civ. Proc. § 657, subd. (1));
- 8 (3) Irregularity in the proceedings caused by defendants Father Joseph Illo, Father Francis
- 9 Arakal, Monsignor Richard Ryan, Bishop Steven Blaire, the Diocese of Stockton , and their counsel,
- 10 (Code Civ. Proc. § 657, subd. (1));
- 11 (4) Improper orders of the Court, (Code Civ. Proc. § 657, subd. (1));
- 12 (5) Abuse of discretion by the Court, (Code Civ. Proc. § 657, subd. (1));
- 13 (6) Misconduct of the jury, (Code Civ. Proc. § 657, subd. (2));
- 14 (7) Accident or surprise, which ordinary prudence could not have guarded against, (Code
- 15 Civ. Proc. § 657, subd. (3));
- 16 (8) The award of damages was inadequate, (Code Civ. Proc. § 657, subd. (5));
- 17 (9) The evidence was insufficient to justify the verdict, (Code Civ. Proc. § 657, subd. (6));
- 18 (10) The verdict is contrary to law, (Code Civ. Proc. § 657, subd. (6)); and,
- 19 (11) Error in law occurring at the trial and objected to by the moving party, (Code Civ. Proc.
- 20 § 657, subd. (7)).
- 21

22 The motion will be based on this Notice, the evidence presented at trial, all pleadings, papers
23 and records in this action, the minutes of the Court, and a memorandum of points and authorities
24 to be filed and served within the time permitted by California Rules of Court, rule 203. T h e
25 motion will also be based upon declarations supporting the first through eleventh grounds
26
27

1 enumerated above as required by Code of Civil Procedure section 658, to be filed and served within
2 the time permitted by Code of Civil Procedure section 659a.

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4 Dated: 15 April 2005

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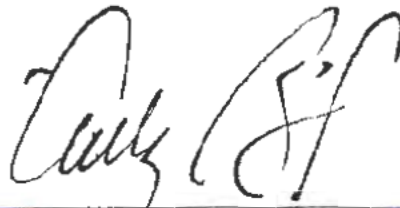
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Anthony Boskovich
Attorney for plaintiffs

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

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

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

FILED
05 APR 18 PM 12:08
ROSA JUNQUEIRO, CLERK
BY _____
DEPUTY

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

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

No. CV 018440
PROOF OF SERVICE

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

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

24 On April 15, 2005, I caused to be served the foregoing :

- 25 **1. NOTICE OF INTENTION TO MOVE FOR NEW TRIAL**
26
27
28

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

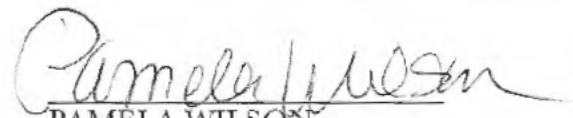
1 on the parties involved in said cause by placing a true and correct copy of the document(s) listed
2 above enclosed in a sealed envelope(s) and causing said envelope(s) to be delivered to an overnight
3 delivery carrier with delivery fees provided for, addressed to the following person(s) on whom it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

5 Michael Coughlan, Esq.
6 Coughlan & O'Rourke, LLP
7 3031 W. March Lane, Suite 210 West
8 Stockton, CA 95219

9 Vladimir F. Kozina, Esq.
10 Mayall, Hurley, Knutsen, Smith & Green
11 2453 Grand Canal Blvd., 2nd Floor
12 Stockton, CA 95207-8253

13 Executed on 15 April 2005, at San Jose, California.

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

16 
17 PAMELA WILSON

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): VLADIMIR F. KOZINA (State Bar # 95422) MAYALL, HURLEY, KNUTSEN, SMITH & GREEN 2453 Grand Canal Boulevard Stockton, California 95207 TELEPHONE NO.: (209) 477-3833 FAX NO.: (209) 473-4818 ATTORNEY FOR (Name): Ilo, Diocese, Roman Catholic Bishop; Mons. Ryan	FOR COURT USE ONLY 05 APR 11 AM 8:34 CLERK DEPUTY
INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN	
PLAINTIFF: KATHLEEN MACHADO DEFENDANT: FR. JOSEPH ILLO	
MEMORANDUM OF COSTS (SUMMARY)	CASE NUMBER: CV018440

The following costs are requested:

	TOTALS	
1. Filing and motion fees	1. \$	902.40
2. Jury fees	2. \$	
3. Jury food and lodging	3. \$	
4. Deposition costs	4. \$	14,661.70
5. Service of process	5. \$	1,040.00
6. Attachment expenses	6. \$	
7. Surety bond premiums	7. \$	
8. Witness fees	8. \$	2,872.00
9. Court-ordered transcripts	9. \$	376.00
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	10. \$	
11. Models, blowups, and photocopies of exhibits	11. \$	358.94
12. Court reporter fees as established by statute	12. \$	6,300.00
13. Other	13. \$	1,252.80
TOTAL COSTS	\$	27,763.84

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: April 7, 2005

VLADIMIR F. KOZINA (TYPE OR PRINT NAME)	 (SIGNATURE)
--	-----------------

(Proof of service on reverse)

SHORT TITLE: <p style="text-align: center; margin: 0;">MACHADO v. ILLO</p>	CASE NUMBER: <p style="text-align: center; margin: 0;">CV018440</p>
--	---

PROOF OF MAILING PERSONAL DELIVERY

1. At the time of mailing or personal delivery, I was at least 18 years of age and **not a party** to this legal action.
2. My residence or business address is (*specify*): 2453 Grand Canal Boulevard, Stockton, CA

3. I mailed or personally delivered a copy of the *Memorandum of Costs (Summary)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope AND
 - (e) **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served: See attached proof of service
 - (b) Address on envelope:

 - (c) Date of mailing:
 - (d) Place of mailing (*city and state*):
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:

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

Date:

.....
(TYPE OR PRINT NAME)

Proof of service follows
Worksheet

(SIGNATURE OF DECLARANT)

SHORT TITLE: <p style="text-align: center;">MACHADO v. ILLO</p>	CASE NUMBER: <p style="text-align: center;">CV018440</p>
MEMORANDUM OF COSTS (WORKSHEET)	

1. Filing and motion fees

	<u>Paper filed</u>	<u>Filing fee</u>
a. <u>Motion to Strike</u>	\$	25.30
b. <u>Answer</u>	\$	840.80
c. <u>Motion to Continue</u>	\$	36.30
d. _____	\$	_____
e. _____	\$	_____
f. _____	\$	_____
g. <input type="checkbox"/> Information about additional filing and motion fees is contained in Attachment 1g.		

TOTAL 1. \$ 902.40

2. Jury fees

	<u>Date</u>	<u>Fee & mileage</u>
a. _____	\$	_____
b. _____	\$	_____
c. _____	\$	_____
d. _____	\$	_____
e. <input type="checkbox"/> Information about additional jury fees is contained in Attachment 2e.		

TOTAL 2. \$ 0.00

3. Juror food: \$ _____ and lodging: \$ _____

TOTAL 3. \$ 0.00

4. Deposition costs

	<u>Name of deponent</u>	<u>Taking</u>	<u>Transcribing</u>	<u>Travel</u>	<u>Video-taping</u>	<u>Subtotals</u>
a.	<u>Roger Katz</u>	\$	489.05	\$	\$	489.05
b.	<u>Richard Sipe</u>	\$	1,713.36	\$	\$	1,713.36
c.	<u>K. Machado, II and III</u>	\$	2,586.49	\$	\$	2,586.49
d.	<u>Det. Bali</u>	\$	943.62	\$	\$	943.62

e. Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4. \$ 14,661.70

(Continued on reverse)

SHORT TITLE: <p style="text-align: center; margin: 0;">MACHADO v. ILLO</p>	CASE NUMBER: <p style="text-align: center; margin: 0;">CV018440</p>
---	--

5. Service of process

	Name of person served	Public officer	Registered process	Publication	Other (specify)
a.	See Attached	\$ _____	\$ 1,040.00	\$ _____	\$ _____
b.	_____	\$ _____	\$ _____	\$ _____	\$ _____
c.	_____	\$ _____	\$ _____	\$ _____	\$ _____

d. Information about additional costs for service of process is contained in Attachment 5d.

TOTAL 5. \$ 1,040.00

6. Attachment expenses (specify):

6. \$ 0.00

7. Surety bond premiums (itemize bonds and amounts):

7. \$ 0.00

8. a. Ordinary witness fees

	Name of witness	Daily fee	Mileage	Total
(1)	See Attached	1 days at 1,347 \$/day	_____ miles at _____ ¢/mile	\$ 1,347.00
(2)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____
(3)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____
(4)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____
(5)	_____	_____ days at _____ \$/day	_____ miles at _____ ¢/mile	\$ _____

(6) Information about additional ordinary witness fees is contained in Attachment 8a(6).

SUBTOTAL 8a. \$ 1,347.00

(Continued on next page)

SHORT TITLE: <p style="text-align: center; margin: 0;">MACHADO v. ILLO</p>	CASE NUMBER: <p style="text-align: center; margin: 0;">CV018440</p>
MEMORANDUM OF COSTS (WORKSHEET) (Continued)	

8. b. **Expert fees** (per Code of Civil Procedure section 998)

Name of witness	Fee
(1) <u>Richard Sipe</u> <u>3.00</u> hours at \$ <u>300.00</u> /hr ... \$	<u>900.00</u>
(2) <u>Sonnee Weedn</u> <u>2.50</u> hours at \$ <u>250.00</u> /hr ... \$	<u>625.00</u>
(3) _____ hours at \$ _____ /hr ... \$	_____
(4) _____ hours at \$ _____ /hr ... \$	_____
(5) <input type="checkbox"/> Information about additional expert witness fees is contained in Attachment 8b(5).	

SUBTOTAL 8b. \$ 1,525.00

c. **Court-ordered expert fees**

Name of witness	Fee
(1) _____ hours at \$ _____ /hr ... \$	_____
(2) _____ hours at \$ _____ /hr ... \$	_____
(3) <input type="checkbox"/> Information about additional court-ordered expert witness fees is contained in Attachment 8c(3).	

SUBTOTAL 8c. \$ 0.00

TOTAL (8a, 8b, & 8c) 8. \$ 2,872.00

9. **Court-ordered transcripts (specify):** 9. \$ 376.00
 Carrie Dahl 340.00 Continued in Attachment 9

10. **Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required):** 10. \$

11. **Models, blowups, and photocopies of exhibits (specify):** 11. \$ 358.94
 LT - Trial Exhibits 119.06

12. **Court reporter fees (as established by statute)** Continued in Attachment 11

a. (Name of reporter): 3-1 to 3-4 Fees: \$ 1,350.00

b. (Name of reporter): 3-8 to 3-11 Fees: \$ 1,800.00

c. Information about additional court reporter fees is contained in Attachment 12c.

TOTAL 12. \$ 6,300.00

13. **Other (specify):** Jury Fee Questionnaire Copies \$1,252.80 13. \$ 1,252.80

TOTAL COSTS	\$ 27,763.84
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(Additional information may be supplied on the reverse)

Attachment 4e

Deposition Costs, Continued

Witness	Reporter Fee
Sonnee Weedn	1,678.01
Diane Stephens	632.50
Owen Kummerle	459.20
Mary Mullins	110.00
Stephen E. Blaire	686.07
Monsignor Ryan	1,065.85
Rachel Lomas	1186.85
Amber Lomas	812.30
E. Shield, Eva Kristman, Ana Lopez, Yvonne McLoughlin	1410.45
K. Machado, VI	228.25
Mary Mullins	659.70

Attachment 5 – Service of Process and
Attachment 8 – Ordinary Witness Fees

Witness	Process Service Fee	Witness Fee	Total
Owen Kummerle	20.00		20.00
Norman Schmidt	25.00		25.00
Mary Mullins	20.00		20.00
Sujay Netrus	20.00		20.00
Rick Dinublio	20.00		20.00
Pam Dinublio	20.00		20.00
Jackie Tucker	30.00		30.00
Mike Perino	20.00	150.00	170.00
Diane Stephens	20.00	351.00	371.00
Yvonne McLaughlin	20.00		20.00
Ana DeVilliers	20.00		20.00
Marian Shewfelt	20.00		20.00
William Capiello	20.00		20.00
Johnny Smith	45.00		45.00
Dep. Don Bali	20.00	150.00	170.00
Dep Don Bali (Depo)	35.00	150.00	185.00
Sonnee Weedn (Dep)	25.00		25.00
Richard Katz	35.00		35.00
Donna Yarnall		55.00	55.00
Ed Tobias		55.00	55.00
Diane Kelly		53.00	53.00
Tami Bowman		53.00	53.00
Deana Watson	85.00	75.00	160.00
Det. Bali	20.00	150.	175.00
Norman Schmidt	80.00	35.00	115.00
Diane Stephens	80.00	70.00	150.00
Service of Lopez, Mcloughlin, Shields, and Kristman	340.00		340.00
TOTAL	1040.00	1347.00	2387.00

Attachment 9

Court-Ordered Transcripts

Transcript: Cara Poe
Amount: \$36.00

Attachment 11

Models, Blowups, and Photocopies of Exhibits

Specify: Longs - Photos
Amount: \$154.38

Specify: Longs - Photos
Amount: \$64.00

Specify: Gluskins
Amount: \$21.50

Attachment 12c

Court Reporter Fees

Reporter Name: 3-14 to 3-18
Fees: \$2,025.00

Reporter Name: 3-22 to 3-25
Fees: \$1,125.00

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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: MEMORANDUM OF COSTS (SUMMARY) AND (WORKSHEET)

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

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

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


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

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Served and executed on April 7, 2005, at Stockton, California.



SHERI SIGMAN

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): MICHAEL D. COUGHLAN, Attorney at Law 124398 3031 W. March Lane, Suite 210 West Stockton, CA 95219 TELEPHONE NO.: (209) 952-3878 FAX NO.: ATTORNEY FOR (Name): INSERT NAME OF COURT, JUDICIAL DISTRICT, AND BRANCH COURT, IF ANY: <p style="text-align: center;">SAN JOAQUIN SUPERIOR COURT</p> PLAINTIFF: KATHLEEN MACHADO, et al DEFENDANT: FR. JOSEPH ILLO, et al	<p style="text-align: center; font-size: small;">FOR COURT USE ONLY</p> <p style="font-size: x-small;">cy</p> <p style="text-align: center;">Filed APR 7 2005</p> <p style="font-size: x-small;">ROSA JUNGQUIRO, CLERK</p> <p style="font-size: x-small;">By <i>Charlene Gray</i></p> <p style="text-align: center; font-size: x-small;">DEPUTY</p> <p style="font-size: x-small;">CASE NUMBER: CV 018440</p>
MEMORANDUM OF COSTS (SUMMARY)	

The following costs are requested:

	TOTALS	
1. Filing and motion fees	1. \$	210.20
2. Jury fees	2. \$	
3. Jury food and lodging	3. \$	
4. Deposition costs	4. \$	10,036.08
5. Service of process	5. \$	
6. Attachment expenses	6. \$	
7. Surety bond premiums	7. \$	
8. Witness fees	8. \$	
9. Court-ordered transcripts	9. \$	
10. Attorney fees (enter here if contractual or statutory fees are fixed without necessity of a court determination; otherwise a noticed motion is required)	10. \$	
11. Models, blowups, and photocopies of exhibits	11. \$	
12. Court reporter fees as established by statute	12. \$	
13. Other	13. \$	
TOTAL COSTS	\$	10,246.28

I am the attorney, agent, or party who claims these costs. To the best of my knowledge and belief this memorandum of costs is correct and these costs were necessarily incurred in this case.

Date: April 4, 2005

..... **MICHAEL D. COUGHLAN**

(TYPE OR PRINT NAME)

(Proof of service on reverse)

(SIGNATURE)

SHORT TITLE: MACHADO, et al v ILLO, ET AL	CASE NUMBER: CV 018440
--	-------------------------------

PROOF OF MAILING PERSONAL DELIVERY

1. At the time of mailing or personal delivery, I was at least 18 years of age and **not a party** to this legal action.
2. My residence or business address is (*specify*): 3031 W. March Lane, Suite 210 West
Stockton, CA 95219
3. I mailed or personally delivered a copy of the *Memorandum of Costs (Summary)* as follows (*complete either a or b*):
 - a. **Mail.** I am a resident of or employed in the county where the mailing occurred.
 - (1) I enclosed a copy in an envelope AND
 - (a) **deposited** the sealed envelope with the United States Postal Service with the postage fully prepaid.
 - (b) **placed** the envelope for collection and mailing on the date and at the place shown in items below following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.
 - (2) The envelope was addressed and mailed as follows:
 - (a) Name of person served: SEE ATTACHED SERVICE LIST
 - (b) Address on envelope:

 - (c) Date of mailing: April 4, 2005
 - (d) Place of mailing (*city and state*): Stockton, California
 - b. **Personal delivery.** I personally delivered a copy as follows:
 - (1) Name of person served:
 - (2) Address where delivered:

 - (3) Date delivered:
 - (4) Time delivered:

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

Date: April 4 2005

..... CRYSTAL KYES
(TYPE OR PRINT NAME)

▶ *Crystal Kyes*
(SIGNATURE OF DECLARANT)

SHORT TITLE:
MACHADO, et al v ILLO, ET AL

CASE NUMBER:
CV019283

MEMORANDUM OF COSTS (WORKSHEET)

1. Filing and motion fees

	<u>Paper filed</u>	<u>Filing fee</u>
a.	ANSWER _____	\$ 210.20
b.	_____	\$ _____
c.	_____	\$ _____
d.	_____	\$ _____
e.	_____	\$ _____
f.	_____	\$ _____

g. Information about additional filing and motion fees is contained in Attachment 1g.

TOTAL 1. \$ 210.20

2. Jury fees

	<u>Date</u>	<u>Fee & mileage</u>
a.	_____	\$ _____
b.	_____	\$ _____
c.	_____	\$ _____
d.	_____	\$ _____

e. Information about additional jury fees is contained in Attachment 2e.

TOTAL 2. \$

3. Juror food: \$ _____ and lodging: \$ _____

TOTAL 3. \$

4. Deposition costs

	<u>Name of deponent</u>	<u>Taking</u>	<u>Transcribing</u>	<u>Travel</u>	<u>Video-taping</u>	<u>Subtotals</u>
a.	Fr. Francis Arakal	\$ _____	\$ 431.65	\$ _____	\$ _____	\$ 431.65
b.	Amber Lomas	\$ _____	\$ 350.30	\$ _____	\$ _____	\$ 350.30
c.	Rachel Lomas	\$ _____	\$ 544.85	\$ _____	\$ _____	\$ 544.85
d.	Kathleen Machado	\$ _____	\$ 1950.25	\$ _____	\$ _____	\$ 1950.25

e. Information about additional deposition costs is contained in Attachment 4e.

TOTAL 4. \$ 10,036.08

(Continued on reverse)

1			
2	Mary Mullins-deposition	\$649.70	
3	Eva Kristman-deposition	\$173.15	
4	Elaine Shields-deposition	\$258.65	
5	Ana Lopez-deposition	\$89.75	
6	Yvonne McLoughlin-deposition	\$551.10	
7	Deanna Watson-deposition	\$456.45	
8	Owen Kummerie-deposition	\$367.45	
9	Roger Katz-deposition	\$496.45	
10	Richard Sipe-deposition	\$852.56	
11	Diane Stephens-deposition	\$221.70	
12	Don Bali-deposition	\$504.00	
13	Steven Blaire-deposition	\$1072.22	
14	Richard Ryan-deposition	\$1065.85	
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SERVICE LIST

George J. MacKoul, Esq.
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2453 Grand Canal Blvd., Second Floor
Stockton, CA 95207

CS

Filed APR 4 2005

ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNT OF SAN JOAQUIN

Kathleen Machado, et al
Plaintiff(s)

**NOTICE OF ENTRY OF
JUDGMENT**

VS

Fr. Joseph Illo, et al
Defendant(s)

Case No. CV018440

You are notified that a judgment in this cause was entered on April 4, 2005

By Charlene Gray
Deputy Clerk

ATTORNEYS OF RECORD

George J. MacKoul
SABBAH AND MacKOUL
49 Locust Street
Falmouth, MA 02540

Tony Boskovich
LAW OFFICES OF A. BOSKOVICH
28 N. First Street, Suite 600
San Jose, CA 95113

Vladimir Kozina
MAYALL, HURLEY, KNUTSEN, et al
2453 Grand Canal Blvd., 2nd Floor
Stockton, CA 95207-8253

Michael D. Coughlan
ATTORNEY AT LAW
3031 W. March Lane, Suite 210 West
Stockton, CA 95219

[] Addition addresses attached.

I am a Deputy Clerk of the above entitled Court and not a party to the above entitled action. I served the above **NOTICE OF ENTRY OF JUDGMENT** by depositing a true copy thereof in the United States mail in Stockton, CA on **April 4, 2005** enclosed in a sealed envelope with the postage thereon fully prepaid, addressed to each attorney of record at his respective Post Office address as set forth in this notice.

Charlene Gray
Deputy Clerk

NOTICE OF ENTRY

Filed APR 4 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

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

Kathleen Machado, et al
Plaintiffs

Case #CV018440

vs.

**JUDGMENT ON SPECIAL
VERDICT IN OPEN COURT**

Fr. Joseph Illo, et al
Defendants

This action came on regularly for Trial. The parties appeared by their attorneys: George MacKoul & Tony Boskovich, Attorneys at Law, on behalf of the Plaintiff Kathleen Machado as an individual and as Guardian ad Litem for Rachel Lomas (hereafter referred to as "Rachel Lomas") and Amber Lomas (hereafter referred to as "Amber Lomas"); Vladimir Kozina, Attorney at Law, on behalf of Defendants Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton, a corporation sole; Michael Coughlan, Attorney at Law, on behalf of Defendant Fr. Francis Arakal.

A jury of 12 persons was regularly empaneled and sworn to try said action. Witnesses on the part of the Plaintiffs and Defendants were sworn and examined. The jury heard the evidence and the arguments of counsel. The jurors were given instructions at which time they retired to consider their special verdict. Subsequently the jury returned to the courtroom and rendered the following special verdict:

[X] see copy of the verdict attached.

Based on this verdict, the Court renders Judgment as follows:

Judgment for Plaintiff Amber Lomas against Defendants Fr. Joseph Illo for economic damages in the sum of \$12,000.00 with interest at the rate of 7% per annum from September 11, 2001 in the sum of \$2,734.70 for a total sum of \$14,734.70 and Fr. Francis Arakal for economic damages in the amount of \$8,000.00 with interest at the rate of 7% per annum from September 11, 2001 in the sum of \$1,783.50 for a total sum of \$9,783.50;

that Defendants Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton, a corporation sole have judgment that Plaintiff Kathleen Machado, Rachel Lomas and Amber Lomas take nothing;

that Defendants Fr. Joseph Illo and Fr. Francis Arakal have judgment that Kathleen Machado and Rachel Lomas take nothing;

that Plaintiff Amber Lomas recover costs from Defendants Fr. Joseph Illo and Fr. Francis Arakal in the amount of _____;

that Defendants Fr. Richard Ryan, Bishop Steven Blair and the Roman Catholic Bishop of Stockton, a corporation sole, recover costs from Plaintiffs Kathleen Machado, Rachel Lomas and Amber Lomas in the amount of _____;

that Defendants Fr. Joseph Illo and Fr. Francis Arakal recover costs from Plaintiffs Kathleen Machado and Rachel Lomas in the amount of _____.

Costs to be determined by law and entered on the Judgment.

Date: April 4, 2005


Hon. Elizabeth Humphreys
Judge of the Superior Court

6-10-05

Plaintiff Kathleen Machado as guardian ad litem
for Amber gets \$9,348.10. Defendants get \$23,999.54
from Kathleen Machado, individually & as guardian ad
litem for Rachel Lomas.

Filed MAR 25 2005
ROSA JUNQUEIRO, CLERK
Charlene Gray
DEPUTY

SPECIAL VERDICT
A. SEXUAL BATTERY: RACHEL LOMAS

1. Did Defendant Fr. Francis Arakal do an act with the intent to cause a harmful or offensive contact with an intimate part of Rachel Lomas?

_____ YES X _____ NO

If your answer is YES, go to question 2. If your answer is NO, go to Part B.

2. If you find that Defendant Fr. Francis Arakal did an act with the intent to cause a harmful or offensive contact with an intimate part of Rachel Lomas, did it result in a sexually offensive contact either directly or indirectly?

_____ YES _____ NO

If your answer is YES, go to question 3. If your answer is NO, go to Part B.

3. Did Rachel Lomas consent to the contact?

_____ YES _____ NO

If your answer is NO, go to question 4. If your answer is YES, go to Part B.

4. Did the harmful or offensive contact cause Rachel Lomas to suffer injury, damage, loss, or harm?

_____ YES _____ NO

If your answer is YES, go to question 5. If your answer is NO, go to Part B.

5. Did any of the following ratify the conduct of Fr. Francis Arakal?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

PUNITIVE DAMAGES

6. Has Rachel Lomas proved by clear and convincing evidence that Fr. Francis Arakal acted with malice, oppression, or fraud?

_____ YES _____ NO

GO TO PART B

B. BATTERY – RACHEL LOMAS

1. Did Fr. Francis Arakal touch Rachel Lomas with the intent to harm or offend her?

_____ YES NO

If your answer to question 1 is YES, then answer question 2. If you answered NO, go to Part C.

2. Did Rachel Lomas consent to be touched?

_____ YES _____ NO

If your answer to question 2 is NO, then answer question 3. If you answered YES, go to Part C.

3. Was Rachel Lomas harmed or offended by Fr. Francis Arakal's conduct?

_____ YES _____ NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part C.

4. Would a reasonable person in Rachel Lomas' situation have been offended by the touching?

_____ YES _____ NO

If your answer to question 4 is YES, then answer question 5. If you answered NO, go to Part C.

5. Did any of the following ratify the conduct of Fr. Francis Arakal?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6. Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question 7 is YES, then answer question 8. If you answered NO, stop here, go to Part C.

8. Was Fr. Francis Arakal acting within the scope of his agency when he undertook the conduct toward Rachel Lomas?

_____ YES _____ NO

PUNITIVE DAMAGES

7. Has Rachel Lomas proved by clear and convincing evidence that Fr. Francis Arakal acted with malice, oppression, or fraud?

_____ YES _____ NO

Go to Part C.

C. BATTERY – AMBER LOMAS

1. Did Fr. Francis Arakal touch Amber Lomas with the intent to harm or offend her?

_____ YES NO

If your answer to question 1 is YES, then answer question 2. If you answered NO, go to Part D.

2. Did Amber Lomas consent to be touched?

_____ YES _____ NO

If your answer to question 2 is NO, then answer question 3. If you answered YES, go to Part D.

3. Was Amber Lomas harmed or offended by Fr. Francis Arakal's conduct?

_____ YES _____ NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part D.

4. Would a reasonable person in Amber Lomas' situation have been offended by the touching?

_____ YES _____ NO

If your answer to question 4 is YES, then answer question 5. If you answered NO, go to Part D.

5. Did any of the following ratify the conduct of Fr. Francis Arakal?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6. Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question 6 is YES, then answer question 7. If you answered NO, stop here, go to Part D.

8. Was Fr. Francis Arakal acting within the scope of his agency when he undertook the conduct toward Amber Lomas?

_____ YES _____ NO

Go to Part D.

D. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – RACHEL LOMAS

1. With respect to Rachel Lomas, was Fr. Francis Arakal or Fr. Joseph Illo's conduct outrageous?

Fr. Francis Arakal? _____ YES ~~_____ NO~~

Fr. Joseph Illo? _____ YES ~~_____ NO~~

If your answer to question 1 is YES to either defendant, then answer question 2 for that defendant. If you answered NO for both defendants, stop here, go to Part E.

2(a). Did Fr. Francis Arakal or Fr. Joseph Illo intend to cause Rachel Lomas emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES _____ NO

2(b) Did Fr. Francis Arakal or Fr. Joseph Illo act with reckless disregard of the probability that Rachel Lomas would suffer emotional distress, knowing that Rachel Lomas was present when the conduct occurred?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES _____ NO

If your answer to question 2(a) or 2(b) is YES for either defendant, then answer question 3 for that defendant. If you answered NO to each question in 2(a) and 2(b), stop here, and go to Part E.

3. Did Rachel Lomas suffer severe emotional distress?

_____ YES _____ NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part E.

4. Was Fr. Francis Arakal or Fr. Joseph Illo's conduct a substantial factor in causing Rachel Lomas's severe emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES _____ NO

If your answer to question 4 is YES for either defendant, then answer question 5 for the defendant for whom you answered YES. If you answered NO for both defendants, stop here and go to Part E.

5. Did any of the following ratify the conduct of Fr. Francis Arakal /Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

6(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 6 (a) or 6 (b) is YES, then answer question 7 with respect to such defendant. If you answered NO, stop here, go to Part E.

7. As to any defendant for whom you answered YES as to question 6, was that defendant acting within the scope of his agency when he undertook the conduct toward Rachel Lomas?

Fr. Francis Arakal _____ YES _____ NO

Fr. Joseph Illo _____ YES _____ NO

PUNITIVE DAMAGES

8. Has Rachel Lomas proved by clear and convincing evidence that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, or Bishop Steven Blaire acted with malice, oppression, or fraud?

As to Fr. Joseph Illo:

_____ YES _____ NO

As to Fr. Francis Arakal:

_____ YES _____ NO

As to Msgr. Richard Ryan:

_____ YES _____ NO

As to Bishop Steven Blaire:

_____ YES _____ NO

Go to Part E.

E. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS – AMBER LOMAS

1. With respect to Amber Lomas, was Fr. Francis Arakal or Fr. Joseph Illo's conduct outrageous?

Fr. Francis Arakal? _____ YES X NO

Fr. Joseph Illo? X YES _____ NO

If your answer to question 1 is YES to either defendant, then answer question 2 for that defendant. If you answered NO for both defendants, stop here, go to Part F.

2(a). Did Fr. Francis Arakal or Fr. Joseph Illo intend to cause Amber Lomas emotional distress?

Fr. Francis Arakal? _____ YES _____ NO

Fr. Joseph Illo? _____ YES X NO

2(b) Did Fr. Francis Arakal or Fr. Joseph Illo act with reckless disregard of the probability that Amber Lomas would suffer emotional distress, knowing that Amber Lomas was present when the conduct occurred?

Fr. Francis Arakal? _____ YES _____ NO
Fr. Joseph Illo? X YES _____ NO

If your answer to question 2(a) or 2(b) is YES for either defendant, then answer question 3 for that defendant. If you answered NO to each question in 2(a) and 2(b), stop here, and go to Part F.

3. Did Amber Lomas suffer severe emotional distress?

_____ YES X NO

If your answer to question 3 is YES, then answer question 4. If you answered NO, go to Part F.

4. Was Fr. Francis Arakal or Fr. Joseph Illo's conduct a substantial factor in causing Amber Lomas's severe emotional distress?

Fr. Francis Arakal? _____ YES _____ NO
Fr. Joseph Illo? _____ YES _____ NO

If your answer to question 4 is YES for either defendant, then answer question 5 for the defendant for whom you answered YES. If you answered NO for both defendants, stop here and go to Part F.

5. Did any of the following ratify the conduct of Fr. Francis Arakal /Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 6.

6(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

6(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 6 (a) or 6 (b) is YES, then answer question 7 with respect to such defendant. If you answered NO, stop here, go to Part F.

7. As to any defendant for whom you answered YES as to question 6, was that defendant acting within the scope of his agency when he undertook the conduct toward Amber Lomas?

Fr. Francis Arakal _____ YES _____ NO

Fr. Joseph Illo _____ YES _____ NO

PUNITIVE DAMAGES

8. Has Amber Lomas proved by clear and convincing evidence that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, or Bishop Steven Blaire acted with malice, oppression, or fraud?

As to Fr. Joseph Illo:

_____ YES _____ NO

As to Fr. Francis Arakal:

_____ YES _____ NO

As to Msgr. Richard Ryan:

_____ YES _____ NO

As to Bishop Steven Blaire:

_____ YES _____ NO

Go to Part F.

F. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS - KATHLEEN MACHADO

1. With respect to Kathleen Machado, was Fr. Francis Arakal or Fr. Joseph Illo's conduct outrageous?

Fr. Francis Arakal?	_____ YES	<u> X </u> NO
Fr. Joseph Illo?	_____ YES	<u> X </u> NO

If your answer to question 1 is YES to either defendant, then answer question 2 for that defendant. If you answered NO for both defendants, stop here, go to Part G.

2(a). Did Fr. Francis Arakal or Fr. Joseph Illo intend to cause Kathleen Machado emotional distress?

Fr. Francis Arakal?	_____ YES	_____ NO
Fr. Joseph Illo?	_____ YES	_____ NO

6(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

6(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 6 (a) or 6 (b) is YES, then answer question 7 with respect to such defendant. If you answered NO, stop here, go to Part G.

7. As to any defendant for whom you answered YES as to question 6, was that defendant acting within the scope of his agency when he undertook the conduct toward Kathleen Machado?

Fr. Francis Arakal _____ YES _____ NO

Fr. Joseph Illo _____ YES _____ NO

PUNITIVE DAMAGES

8. Has Kathleen Machado proved by clear and convincing evidence that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, or Bishop Steven Blaire acted with malice, oppression, or fraud?

As to Fr. Joseph Illo:

_____ YES _____ NO

As to Fr. Francis Arakal:

_____ YES _____ NO

As to Msgr. Richard Ryan:

_____ YES _____ NO

As to Bishop Steven Blaire:

_____ YES _____ NO

Go to Part G.

G. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS – RACHEL LOMAS

With respect to Rachel Lomas:

1. Was Fr. Joseph Illo negligent?

_____ YES X NO

Was Fr. Francis Arakal negligent?

_____ YES X NO

Was Msgr Richard Ryan negligent?

_____ YES X NO

Was Bishop Steven Blaire negligent?

_____ YES X NO

If you answered YES in any part of question 1, then answer question 2. If you answered NO to all parts of question 1, stop here, go to Part H.

2. For each defendant that received a "YES" answer in question 1, answer the following:

Was Fr. Joseph Illo's negligence a substantial factor in causing harm to Rachel Lomas?

_____ YES _____ NO

Was Fr. Francis Arakal's negligence a substantial factor in causing harm to Rachel Lomas?

_____ YES _____ NO

Was Msgr Richard Ryan's negligence a substantial factor in causing harm to Rachel Lomas?

_____ YES _____ NO

Was Bishop Steven Blaire's negligence a substantial factor in causing harm to Rachel Lomas?

_____ YES _____ NO

If you answered YES in any part of question 2 with respect to one or more of the defendants, then answer question 3 as to that/those defendants. If you answered NO regarding all persons in question 2, then insert the number zero next to their names in question 3 and answer question 3.

3. What percentage of responsibility for Rachel's harm do you assign to the following? Insert a percentage for only those who received "YES" answers in question 2:

Fr. Joseph Illo: _____%

Fr. Francis Arakal: _____%

Monsignor Richard Ryan: _____%

Bishop Steven Blaire: _____%

TOTAL 100 %

4. Did any of the following ratify the conduct of Fr. Francis Arakal or Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 5.

5(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

5(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 5(a) or 5(b) is YES, then answer question 6. If you answered NO to both, stop here, go to Part H.

6. Was either Fr. Francis Arakal or Fr. Joseph Illo acting within the scope of his agency when he undertook the conduct toward Rachel Lomas?

Fr. Francis Arakal YES NO

Fr. Joseph Illo YES NO

Go to H

H. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS -- AMBER LOMAS

With respect to Amber Lomas:

1. Was Fr. Joseph Illo negligent?

YES NO

Was Fr. Francis Arakal negligent?

YES NO

Was Msgr Richard Ryan negligent?

YES NO

Was Bishop Steven Blaire negligent?

YES NO

If you answered YES in any part of question 1, then answer question 2. If you answered NO to all parts of question 1, stop here, go to Part I.

2. For each defendant that received a "YES" answer in question 1, answer the following:

Was Fr. Joseph Illo's negligence a substantial factor in causing harm to Amber Lomas?

YES NO

Was Fr. Francis Arakal's negligence a substantial factor in causing harm to Amber Lomas?

X YES _____ NO

Was Msgr Richard Ryan's negligence a substantial factor in causing harm to Amber Lomas?

_____ YES X NO

Was Bishop Steven Blaire's negligence a substantial factor in causing harm to Amber Lomas?

_____ YES X NO

If you answered YES in any part of question 2 with respect to one or more of the defendants, then answer question 3 as to that/those defendants. If you answered NO regarding all persons in question 2, then insert the number zero next to their names in question 3 and answer question 3.

3. What percentage of responsibility for Amber Lomas's harm do you assign to the following? Insert a percentage for only those who received "YES" answers in question 2:

Fr. Joseph Ilo: 60 %

Fr. Francis Arakal: 40 %

Monsignor Richard Ryan: _____ %

Bishop Steven Blaire: _____ %

TOTAL 100 %

4. Did any of the following ratify the conduct of Fr. Francis Arakal or Fr. Joseph Ilo?

	YES	NO
Bishop Steven Blaire	_____	<u>X</u>
Monsignor Richard Ryan	_____	<u>X</u>
Diocese of Stockton	_____	<u>X</u>

Go to Question 5.

5 (a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

YES NO

Bishop Stephen Blaire

YES NO

Monsignor Richard Ryan

YES NO

5(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

YES NO

Bishop Stephen Blaire

YES NO

Monsignor Richard Ryan

YES NO

If your answer to question either 5 (a) or 5(b) is YES, then answer question 6. If you answered NO to both, stop here, go to Part I.

6. Was either Fr. Francis Arakal or Fr. Joseph Illo acting within the scope of his agency when he undertook the conduct toward Amber Lomas?

Fr. Francis Arakal YES NO

Fr. Joseph Illo YES NO

Go to I

I. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS – KATHLEEN MACHADO

With respect to Kathleen Machado:

1. Was Fr. Joseph Ilio negligent?

_____ YES X NO

Was Fr. Francis Arakal negligent?

_____ YES X NO

Was Msgr Richard Ryan negligent?

_____ YES X NO

Was Bishop Steven Blaire negligent?

_____ YES X NO

If you answered YES in any part of question 1, then answer question 2. If you answered NO to all parts of question 1, stop here, go to Part J.

2. For each defendant that received a "YES" answer in question 1, answer the following:

Was Fr. Joseph Ilio's negligence a substantial factor in causing harm to Kathleen Machado?

_____ YES _____ NO

Was Fr. Francis Arakal's negligence a substantial factor in causing harm to Kathleen Machado?

_____ YES _____ NO

Was Msgr Richard Ryan's negligence a substantial factor in causing harm to Kathleen Machado?

_____ YES _____ NO

Was Bishop Steven Blaire's negligence a substantial factor in causing harm to Kathleen Machado?

_____ YES _____ NO

If you answered YES in any part of question 2 with respect to one or more of the defendants, then answer question 3 as to that/those defendants. If you answered NO regarding all persons in question 2, then insert the number zero next to their names in question 3 and answer question 3.

3. What percentage of responsibility for Kathleen Machado harm do you assign to the following? Insert a percentage for only those who received "YES" answers in question 2:

Fr. Joseph Illo:	_____ %
Fr. Francis Arakal:	_____ %
Monsignor Richard Ryan:	_____ %
Bishop Steven Blaire:	_____ %
TOTAL	100 %

4. Did any of the following ratify the conduct of Fr. Francis Arakal or Fr. Joseph Illo?

	YES	NO
Bishop Steven Blaire	_____	_____
Monsignor Richard Ryan	_____	_____
Diocese of Stockton	_____	_____

Go to Question 5.

5(a). Was the conduct of Fr. Francis Arakal undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

5(b). Was the conduct of Fr. Joseph Illo undertaken as the agent of:

Roman Catholic Bishop of Stockton, a corporation sole

_____ YES _____ NO

Bishop Stephen Blaire

_____ YES _____ NO

Monsignor Richard Ryan

_____ YES _____ NO

If your answer to question either 5(a) or 5(b) is YES, then answer question question 6. If you answered NO to both, stop here, go to Part J.

6. Was Fr. Francis Arakal or Fr. Joseph Illo acting within the scope of his agency when he undertook the conduct toward Kathleen Machado?

Fr. Francis Arakal _____ YES _____ NO

Fr. Joseph Illo _____ YES _____ NO

Go to J

J. DEFAMATION PER SE – KATHLEEN MACHADO.

1. Did Fr. Joseph Illo make one or more of the following statement(s) to a person or persons other than Kathleen Machado?

“All your mother wants is to have sex with me.”

YES _____ NO

“Kathleen Machado is stalking me.”

_____ YES NO

If your answer to question 1 is YES, then answer question 2 for the defendant for whom you gave a YES answer. If you answered NO, stop here, go to Part K.

2. Did the people to whom the statements were made reasonably understand that the statement(s) were about Kathleen Machado?

"All your mother wants is to have sex with me."

YES NO

"Kathleen Machado is stalking me" ..

YES NO

If your answer to question 2 is YES as to any statement, then answer question 3. If you answered NO to all statements, stop here, and go to Part K.

3. Did these people reasonably understand the statement(s) to mean that Kathleen Machado was an unchaste woman or had committed a crime?

Unchaste woman?

YES NO

Committed a crime?

YES NO

If your answer to question 3 is YES in any respect, then answer question 4 for the statement(s) for which you answered YES. If you answered NO to all, stop here and go to Part K.

4. Did Fr. Joseph Illo fail to use reasonable care to determine the truth or falsity of the statement(s)?

"All your mother wants is to have sex with me."

YES NO

"Kathleen Machado is stalking me".

YES NO

If your answer to any part of question 4 is YES, then answer question 5. If you answered NO, stop here, and go to Part ~~A~~

K

ACTUAL DAMAGES

5. What are Kathleen Machado's actual damages?

a. Past Noneconomic loss including shame, mortification, or hurt feelings, and harm to Kathleen Machado's reputation.

As to Fr. Joseph Illo:

\$ _____

B. Future Noneconomic loss including shame, mortification, or hurt feelings, and harm to Kathleen Machado's reputation

As to Fr. Joseph Illo:

\$ _____

TOTAL \$ _____

If Kathleen Machado has Not proved any actual damages, then answer question 6.

If Kathleen Machado has proved any actual damages, skip question 6 and answer question 7.

ASSUMED DAMAGES TO REPUTATION

6. What are the damages you award Kathleen Machado for the assumed harm to her reputation? You must award at least a nominal sum.

As to Fr. Joseph Illo:

\$ _____

As to Fr. Joseph Illo:

\$ _____

Regardless of your answer to question 6, answer question 7.

PUNITIVE DAMAGES

7. Has Kathleen Machado proved by clear and convincing evidence that Fr. Joseph Illo acted with malice, oppression, or fraud?

As to Fr. Joseph Illo:

_____ YES _____ NO

K. DAMAGES

If you found in favor of Rachel Lomas, Amber Lomas, or Kathleen Machado on any cause of action, please answer the following. Otherwise, have the foreperson sign and date this form.

1. What are Rachel Lomas's total damages? Do not reduce the damages based on the fault, if any, of others.

- a. Past economic loss, including medical expenses]: \$ _____
 - b. Future economic loss, including medical expenses: \$ _____
 - c. Past Noneconomic loss, including physical pain, mental suffering: \$ _____
 - d. Future Noneconomic loss, including physical pain, mental suffering: \$ _____
- TOTAL \$ 0

2. What are Amber Lomas's total damages? Do not reduce the damages based on the fault, if any, of others.

- a. Past economic loss, including medical expenses]: \$ 0
 - b. Future economic loss, including medical expenses: \$ 20,000
 - c. Past noneconomic loss, including physical pain, mental suffering: \$ 0
 - d. Future noneconomic loss, including physical pain, mental suffering: \$ 0
- TOTAL \$ 20,000

3. What are Kathleen Machado's total damages, not including the damages awarded for defamation, if any? Do not reduce the damages based on the fault, if any, of others.

a. Past noneconomic loss, including physical pain, mental suffering: \$ _____

b. Future noneconomic loss, including physical pain, mental suffering: \$ _____

TOTAL (excluding defamation) \$ _____

+ DEFAMATION DAMAGES \$ _____

TOTAL DAMAGES FOR KATHLEEN MACHADO \$ 0

Dated: 03/25/05


Foreperson

