

An employee's unauthorized conduct may be within the scope of employment or authorization if the conduct was committed in the course of a series of acts authorized by the employer or the conduct arose from a risk inherent in or created by the enterprise.

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

If you decide that Kathleen Machado, Rachel Lomas, and/or Amber Lomas has proved their claim against Fr. Joseph Ilo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and/or the Diocese of Stockton, you also must decide how much money will reasonably compensate Kathleen Machado, Rachel Lomas, and/or Amber Lomas for the harm. This compensation is called "damages."

The amount of damages must include an award for each item of harm that was caused by Fr. Joseph Ilo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and/or the Diocese of Stockton's wrongful conduct, even if the particular harm could not have been anticipated.

Kathleen Machado, Rachel Lomas, and/or Amber Lomas does not have to prove the exact amount of damages that will provide reasonable compensation for the harm. However, you must not speculate or guess in awarding damages.

The damages claimed by Kathleen Machado, Rachel Lomas, and Amber Lomas for the harm caused by Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and/or the Diocese of Stockton fall into two categories called economic damages and non-economic damages. You will be asked on the verdict form to state the two categories of damages separately.

The following are the specific items of economic damages claimed by Kathleen Machado, Rachel Lomas, and Amber Lomas:

1. Past Medical expenses;
2. Future medical expenses.

1 Past and future medical expenses.

To recover damages for past medical expenses, Rachel Lomas, and/or Amber Lomas must prove the reasonable cost of reasonably necessary medical care that they have received.

To recover damages for future medical expenses, Rachel Lomas, and/or Amber Lomas must prove the reasonable cost of reasonably necessary medical care that they are reasonably certain to need in the future.]

If you decide that Rachel Lomas, and/or Amber Lomas's harm includes future medical expenses, then the amount of those future damages must be reduced to their present cash value. This is necessary because money received now will, through investment, grow to a larger amount in the future.

To find present cash value, you must determine the amount of money that, if reasonably invested today, will provide Rachel Lomas, and/or Amber Lomas with the amount of their future damages.

The following are the specific items of noneconomic damages claimed by Kathleen Machado, Rachel Lomas, and Amber Lomas:

1. Past and future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and emotional distress.

To recover for future mental suffering, loss of enjoyment of life, inconvenience, grief, anxiety, humiliation, and emotional distress., Kathleen Machado, Rachel Lomas, and/or Amber Lomas must prove that they is reasonably certain to suffer that harm.

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

Your award for noneconomic damages should not be reduced to present cash value.

You must not include in your award any damages to punish or make an example of Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and/or the Diocese of Stockton. Such damages would be punitive damages, and they cannot be a part of your verdict. You must award only the damages that fairly compensate Kathleen Machado, Rachel Lomas, and/or Amber Lomas for their loss.

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

You must decide the full amount of money that will reasonably and fairly compensate Kathleen Machado, Rachel Lomas, and/or Amber Lomas for all damages caused by the wrongful conduct of Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and/or the Diocese of Stockton, even if Kathleen Machado, Rachel Lomas, and/or Amber Lomas was more susceptible to injury than a normally healthy person would have been, and even if a normally healthy person would not have suffered similar injury.

If you decide Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and/or the Diocese of Stockton is responsible for the original harm, Rachel Lomas, and/or Amber Lomas is not entitled to recover damages for harm that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire, and/or the Diocese of Stockton proves Rachel Lomas, and/or Amber Lomas could have avoided with reasonable efforts or expenditures.

You should consider the reasonableness of Rachel Lomas, and/or Amber Lomas's efforts in light of the circumstances facing them at the time, including their ability to make the efforts or expenditures without undue risk or hardship.

If Rachel Lomas, and/or Amber Lomas made reasonable efforts to avoid harm, then your award should include reasonable amounts that they spent for this purpose.

If you decide that Fr. Joseph Illo or Fr. Francis Arakal's conduct caused Kathleen Machado, Rachel Lomas, or Amber Lomas harm, you must decide whether that conduct justifies an award of punitive damages against Msgr. Richard Ryan or Bishop Steven Blaire for Fr. Joseph Illo or Fr. Francis Arakal's conduct. At this time, you must decide whether Kathleen Machado, Rachel Lomas, or Amber Lomas has proved by clear and convincing evidence that Fr. Joseph Illo or Fr. Francis Arakal engaged in that conduct with malice, oppression, or fraud. The amount of punitive damages, if any, will be decided later.

"Malice" means that Fr. Joseph Illo or Fr. Francis Arakal acted with intent to cause injury or that Fr. Joseph Illo or Fr. Francis Arakal's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that Fr. Joseph Illo or Fr. Francis Arakal's conduct was despicable and subjected Kathleen Machado, Rachel Lomas, and/or Amber Lomas to cruel and unjust hardship in knowing disregard of their rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that Fr. Joseph Illo or Fr. Francis Arakal intentionally misrepresented or concealed a material fact and did so intending to harm Kathleen Machado, Rachel Lomas, and/or Amber Lomas.

Kathleen Machado, Rachel Lomas, and/or Amber Lomas must also prove one of the following by clear and convincing evidence:

1. That an Msgr. Richard Ryan or Steven Blaire had advance knowledge of the unfitness of Fr. Joseph Illo or Fr. Francis Arakal and employed them with a knowing disregard of the rights or safety of others; or

2. Msgr. Richard Ryan or Bishop Steven Blaire authorized Fr. Joseph Illo or Fr. Francis Arakal's conduct; or

3. That Msgr. Richard Ryan or Bishop Steven Blaire knew of Fr. Joseph Illo or Fr. Francis Arakal's wrongful conduct and adopted or approved the conduct after it occurred.

An employee is a "managing agent" if he or she exercises substantial independent authority and judgment in his or her corporate decision making so that his or her decisions ultimately determine corporate policy.

Members of the jury, you have now heard all the evidence and the closing arguments of the attorneys. It is my duty to instruct you on the law that applies to this case. You must follow these instructions as well as those that I previously gave you. You will have a copy of my instructions with you when you go to the jury room to deliberate. I have provided each of you with your own copy of the instructions.

You must decide what the facts are. You must consider all the evidence and then decide what you think happened. You must decide the facts based on the evidence admitted in this trial. Do not do any research on your own or as a group. Do not use dictionaries, the Internet, or other reference materials. Do not investigate the case or conduct any experiments. Do not contact anyone to assist you, such as a family accountant, doctor, or lawyer. Do not visit or view the scene of any event involved in this case. If you happen to pass by the scene, do not stop or investigate. All jurors must see or hear the same evidence at the same time. Do not read, listen to, or watch any news accounts of this trial. You must not let bias, sympathy, prejudice, or public opinion influence your decision.

I will now tell you the law that you must follow to reach your verdict. You must follow the law exactly as I give it to you, even if you disagree with it. If the attorneys have said anything different about what the law means, you must follow what I say.

In reaching your verdict, do not guess what I think your verdict should be from something I may have said or done.

Pay careful attention to all the instructions that I give you. All the instructions are important because together they state the law that you will use in this case. You must consider all of the instructions together.

After you have decided what the facts are, you may find that some instructions do not apply. In that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

If I repeat any ideas or rules of law during my instructions that does not mean that these ideas or rules are more important than the others are. In addition, the order of the instructions does not make any difference.

Most of the instructions are typed. However, some handwritten or typewritten words may have been added, and some words may have been deleted. Do not discuss or consider why words may have been added or deleted. Please treat all the words the same, no matter what their format. Simply accept the instruction in its final form.

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

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

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

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

Each side had the right to object to evidence offered by the other side. If I sustained an objection to a question, you must ignore the question. If the witness did not answer, you must not guess what he or she might have said or why I sustained the objection. If the witness already answered, you must ignore the answer.

[During the trial I granted a motion to strike testimony that you heard. You must totally disregard that testimony. You must treat it as though it did not exist.]

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

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

(a) How well did the witness see, hear, or otherwise sense what he or she described in court?

(b) How well did the witness remember and describe what happened?

(c) How did the witness look, act, and speak while testifying?

(d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?

(e) What was the witness's attitude toward this case or about giving testimony?

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

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

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

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

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

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

A corporation is a party in this lawsuit. The Roman Catholic Bishop of Stockton, a corporation sole, also known as "The Diocese of Stockton", is entitled to the same fair and impartial treatment that you would give to an individual. You must decide this case with the same fairness that you would use if you were deciding the case between individuals.

When I use words like "person" or "he" or "she" in these instructions to refer to a party, those instructions also apply to the Diocese of Stockton.

When you go to the jury room, the first thing you should do is choose a presiding juror. The presiding juror should see to it that your discussions are orderly and that everyone has a fair chance to be heard.

It is your duty to talk with one another in the jury room and to consider the views of all the jurors. Each of you must decide the case for yourself, but only after you have considered the evidence with the other members of the jury. Feel free to change your mind if you are convinced that your position should be different. You should all try to agree. But do not give up your honest beliefs just because the others think differently.

Please do not state your opinions too strongly at the beginning of your deliberations. Also, do not immediately announce how you plan to vote. Keep an open mind so that you and your fellow jurors can easily share ideas about the case.

You should use your common sense, but do not use or consider any special training or unique personal experience that any of you have in matters involved in this case. Such training or experience is not a part of the evidence received in this case.

Sometimes jurors disagree or have questions about the evidence or about what the witnesses said in their testimony. If that happens, you may ask to have testimony read back to you or ask to see any exhibits admitted into evidence that have not already been provided to you. Also, jurors may need further explanation about the laws that apply to the case. If this happens during your discussions, write down your questions and give them to the clerk or bailiff. I will do my best to answer them. When you write me a note, do not tell me how you voted on an issue until I ask for this information in open court.

[At least nine jurors must agree on each verdict and on each question that you are asked to answer. However, the same jurors do not have to agree on each verdict or each question. Any nine jurors is sufficient. As soon as you have agreed on a verdict and answered all the questions as instructed, the presiding juror must date and sign the form(s) and notify the clerk or the bailiff.]

Your decision must be based on your personal evaluation of the evidence presented in the case. Each of you may be asked in open court how you voted on each question.

While I know you would not do this, I am required to advise you that you must not base your decision on chance, such as a flip of a coin. If you decide to award damages, you may not agree in advance to simply add up the amounts each juror thinks is right and then make the average your verdict. You may take breaks, but do not discuss this case with anyone, including each other, until all of you are back in the jury room.

If you have taken notes during the trial you will now be allowed to take your notebooks with you into the jury room.

You may use your notes only to help you remember what happened during the trial. Your independent recollection of the evidence should govern your verdict and you should not allow yourself to be influenced by the notes of other jurors if those notes differ from what you remember.

The court reporter made a record of everything that was said. If during deliberations you have a question about what the witness said, you may ask in writing for the testimony to be read to you. You must accept the court reporter's record as accurate.

You may request in writing that trial testimony be read to you. I will have the court reporter read the testimony to you in the jury room. You may request that all or a part of a witness's testimony be read. [There is no written transcript of the testimony, only the court reporter's record.]

Reading testimony takes as long as it took for the testimony to be presented in court. Your request should be as specific as possible. It will be helpful if you can state:

1. The name of the witness;
2. The subject of the testimony you would like to have read; and
3. The name of the attorney or attorneys asking the questions when the testimony was given.

The court reporter is not permitted to talk with you when she or he is reading the testimony you have requested.

While the court reporter is in the jury room, you may not deliberate or discuss the case. You must conduct yourself as if the testimony were being presented in court and you were seated in the jury box.

You may not ask the court reporter to read testimony that was not specifically mentioned in a written request.

I will give you a verdict form with questions you must answer. I have already instructed you on the law that you are to use in answering these questions. You must follow my instructions and the form carefully. You must consider each question separately. Please answer the questions in the order they appear. After you answer a question, the form tells you what to do next. At least nine of you must agree on an answer before you can move on to the next question. However, the same nine or more people do not have to agree on each answer.

When you are finished filling out the form, your presiding juror must write the date and sign it at the bottom. Return the form to me when you have finished.

Kathleen Machado claims that Fr. Joseph Illo and Fr. Francis Arakal harmed her by making one or more of the following statement(s):

1. That all she wanted was to have sex with Fr. Illo
2. That she was mentally ill;
3. That she was stalking Fr. Ulo.

To establish this claim, Kathleen Machado must prove all of the following:

Liability

1. That Fr. Joseph Illo and/or Fr. Francis Arakal made one or more of the statements to a person other than Kathleen Machado;
2. That this person reasonably understood that the statements were about Kathleen Machado;
3. That this person reasonably understood the statement(s) to mean that Kathleen Machado was an unchaste woman that Kathleen Machado suffers from a loathsome disease, and/or that Kathleen Machado was stalking Fr. Illo.
4. That Fr. Joseph Illo and/or Fr. Francis Arakal failed to use reasonable care to determine the truth or falsity of the statement (s)

Nominal damages

If Kathleen Machado has proved all of the above, the law assumes that her reputation has been harmed. Without further evidence of damage, Kathleen Machado is entitled to a nominal sum such as one dollar or such greater sum as you believe is proper for the assumed harm to her reputation under the circumstances of this case.

Actual damages

Kathleen Machado is also entitled to recover if she proves that Fr. Joseph Illo and/or Fr. Francis Joseph's wrongful conduct was a substantial factor in causing any of the following actual damages:

- a. Harm to Kathleen Machado's property, business, trade, profession, or occupation;
- b. Expenses Kathleen Machado had to pay as a result of the defamatory statements;
- c. Harm to Kathleen Machado's reputation in addition to that assumed by the law; or
- d. Shame, mortification, or hurt feelings.

If you decide that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, and/or Bishop Steven Blaire's conduct caused Kathleen Machado, Rachel Lomas, and/or Amber Lomas harm, you must decide whether that conduct justifies an award of punitive damages. At this time, you must decide whether Kathleen Machado, Rachel Lomas, and/or Amber Lomas has proved by clear and convincing evidence that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, and/or Bishop Steven Blaire engaged in that conduct with malice, oppression, or fraud. The amount of punitive damages, if any, will be decided later.

"Malice" means that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, and/or Bishop Steven Blaire acted with intent to cause injury or that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, and/or Bishop Steven Blaire's conduct was despicable and was done with a willful and knowing disregard of the rights or safety of another. A person acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or her conduct and deliberately fails to avoid those consequences.

"Oppression" means that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, and/or Bishop Steven Blaire's conduct was despicable and subjected Kathleen Machado, Rachel Lomas, and/or Amber Lomas to cruel and unjust hardship in knowing disregard of their rights.

"Despicable conduct" is conduct that is so vile, base, or contemptible that it would be looked down on and despised by reasonable people.

"Fraud" means that Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, Bishop Steven Blaire intentionally misrepresented or concealed a material fact and did so intending to harm Kathleen Machado, Rachel Lomas, and/or Amber Lomas.

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3 Kathleen Machado claims that Fr. Joseph Illo, Msg. Richard Ryan, Bishop Steven Blaire , and
4 The Roman Catholic Bishop of Stockton harmed her by making the following statements: "All your
5 mother wants to do is have sex with me. To establish this claim, Kathleen Machado must prove all
6 of the following:

7 Liability

8 1. That Fr. Joseph Illo, Msg. Richard Ryan, Bishop Steven Blaire , and The Roman Catholic
9 Bishop of Stockton made the statement to a person or persons other than Kathleen Machado;

10 2. That this person reasonably understood that the statement was about Kathleen Machado;

11 3. That because of the facts and circumstances known to the listener or readers of the
12 statement, it tended to injure Kathleen Machado in her occupation or to expose her to hatred,
13 contempt, ridicule, or shame or to discourage others from associating or dealing with her;

14 4. That the statement was false;

15 5. That Fr. Joseph Illo, Msg. Richard Ryan, Bishop Steven Blaire , and The Roman Catholic
16 Bishop of Stockton failed to use reasonable care to determine the truth or falsity of the
17 statement(s);

18 6. That Kathleen Machado suffered harm to her property, business, profession, or occupation
19 including money spent as a result of the statement; and

20 7. That the statement was a substantial factor in causing Kathleen Machado.

21 Actual damages

22 If Kathleen Machado has proved all of the above, then she is entitled to recover if she proves
23 that Fr. Joseph Illo, Msg. Richard Ryan, Bishop Steven Blaire , and The Roman Catholic Bishop of
24 Stockton's wrongful conduct was a substantial factor in causing any of the following actual
25 damages:

26 a. Harm to Kathleen Machado property, business, trade, profession, or occupation;

27 b. Expenses Kathleen Machado had to pay as a result of the defamatory statements;

28 c. Harm to Kathleen Machado's reputation; or

1 d. Shame, mortification, or hurt feelings.

2 Punitive Damages

3 Kathleen Machado, may also recover damages to punish Fr. Joseph Illo, Msg. Richard Ryan,
4 Bishop Steven Blaire , and The Roman Catholic Bishop of Stockton if they proves by clear and
5 convincing evidence that Fr. Joseph Illo, Msg. Richard Ryan, Bishop Steven Blaire , and The
6 Roman Catholic Bishop of Stockton either knew the statements was false or had serious doubts
7 about the truth of the statement(s), and that they acted with malice, oppression, or fraud.

8 "Malice" means that Fr. Joseph Illo, Msg. Richard Ryan, Bishop Steven Blaire , and The Roman
9 Catholic Bishop of Stockton acted with intent to cause injury or that their conduct was despicable
10 and was done with a willful and knowing disregard of the rights or safety of another. A person acts
11 with knowing disregard when he or she is aware of the probable dangerous consequences of his or
12 her conduct and deliberately fails to avoid those consequences.

13 "Oppression" means that Fr. Joseph Illo, Msg. Richard Ryan, Bishop Steven Blaire , and The
14 Roman Catholic Bishop of Stockton's conduct was despicable and subjected Kathleen Machado
15 to cruel and unjust hardship in knowing disregard of her rights.

16 "Despicable conduct" is conduct that is so mean, vile, base, or contemptible that it would be
17 looked down on and despised by reasonable people.

18 "Fraud" means that Fr. Joseph Illo, Msg. Richard Ryan, Bishop Steven Blaire , and The Roman
19 Catholic Bishop of Stockton intentionally misrepresented or concealed a material fact and did so
20 intending to deprive Kathleen Machado of property or of a legal right or otherwise to cause her
21 injury.

You must now decide the amount, if any, that you should award Kathleen Machado, Rachel Lomas, and/or Amber Lomas in punitive damages. The purposes of punitive damages are to punish a wrongdoer for the conduct that harmed the plaintiff and to discourage similar conduct in the future.

There is no fixed standard for determining the amount of punitive damages, and you are not required to award any punitive damages. If you decide to award punitive damages, you should consider all of the following in determining the amount:

(a) How reprehensible was Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, and/or Steven Blaire's conduct?

(b) Is there a reasonable relationship between the amount of punitive damages and Kathleen Machado, Rachel Lomas, and/or Amber Lomas's harm?

(c) In view of Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, and/or Bishop Steven Blaire's financial condition, what amount is necessary to punish them and discourage future wrongful conduct? You may not increase the punitive award above an amount that is otherwise appropriate merely because Fr. Joseph Illo, Fr. Francis Arakal, Msgr. Richard Ryan, and/or Bishop Steven Blaire has substantial financial resources.

Filed MAR 25 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

KATHLEEN MACHADO, et al
Plaintiffs

vs

FR. JOSEPH ILLLO, et al
Defendants

Case # CV018440

Dept. 41

JURY IINSTRUCTIONS
(not sanitized)

Elizabeth Humphreys
Judge of the Superior Court

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

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

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

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

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

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

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

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

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

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

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3 **101. OVERVIEW OF TRIAL**
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5 To assist you in your tasks as jurors, I will now explain how the trial will proceed.

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

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

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

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

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

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

28 After the evidence has been presented, I will instruct you on the law that applies to the case and the
29 attorneys will make closing arguments. What the parties say in closing argument is not evidence. The
30 arguments are offered to help you understand the evidence and how the law applies to it.

102. TAKING NOTES DURING THE TRIAL

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

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

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103. MULTIPLE PARTIES

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

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104. NON-PERSON PARTY

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

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

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106. EVIDENCE

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

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

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

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

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

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

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

(a) How well did the witness see, hear, or otherwise sense what he or she described in court?

(b) How well did the witness remember and describe what happened?

(c) How did the witness look, act, and speak while testifying?

(d) Did the witness have any reason to say something that was not true? Did the witness show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved in the case? Does the witness have a personal stake in how this case is decided?

(e) What was the witness's attitude toward this case or about giving testimony?

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

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

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

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

1 **200. OBLIGATION TO PROVE--MORE LIKELY TRUE THAN NOT TRUE**
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3 When I tell you that a party must prove something, I mean that the party must persuade you, by the
4 evidence presented in court, that what he or she is trying to prove is more likely to be true than not true.
5 This is sometimes referred to as "the burden of proof."

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

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

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

209. USE OF INTERROGATORIES OF A PARTY

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

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

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

- 10 1. The expert's training and experience;
 - 11 2. The facts the expert relied on; and
 - 12 3. The reasons for the expert's opinion.
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3 **400. ESSENTIAL FACTUAL ELEMENTS**
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5 Kathleen Machado, Amber Lomas and Rachel Lomas claim that they were harmed by Roman
6 Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop
7 Steven Blaire's negligence. To establish this claim, Kathleen Machado, Amber Lomas and Rachel
8 Lomas must prove all of the following:

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

11 2. That Kathleen Machado, Amber Lomas and Rachel Lomas were harmed; and

12 3. That Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis
13 Joseph and Bishop Steven Blaire's negligence was a substantial factor in causing Kathleen Machado,
14 Amber Lomas and Rachel Lomas' harm.

15 Just because Kathleen Machado, Amber Lomas and Rachel Lomas were harmed does not, by itself,
16 mean that Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis
17 Joseph and Bishop Steven Blaire is legally responsible for the harm.
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412. DUTY OF CARE OWED CHILDREN

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An adult must anticipate the ordinary reaction of children. An adult must be more careful when dealing with children than with other adults.

1 **1300. BATTERY--ESSENTIAL FACTUAL ELEMENTS**

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3 Rachel Lomas and Amber Lomas claim that Fr. Francis Josph committed a battery. To establish this
4 claim, Rachel Lomas, and Amber Lomas must prove all of the following:

5 1. That Fr. Francis Joseph touched Rachel Lomas, and Amber Lomas with the intent to harm or
6 offend them;

7 2. That Rachel Lomas, and Amber Lomas did not consent to be touched; and

8 3. That Rachel Lomas, and Amber Lomas were harmed or offended by Fr. Francis Joseph's
9 conduct.

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1 **1302. CONSENT EXPLAINED**

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3 A plaintiff may express consent by words or acts that are reasonably understood by another person
4 as consent.

5 A plaintiff may also express consent by silence or inaction if a reasonable person would understand
6 that the silence or inaction intended to indicate consent.

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1303. INVALID CONSENT

RACHEL LOMAS and AMBER LOMAS claim that any consent, if you find that they consented, was obtained by mistake, duress, as a result of their incapacity or that Fr. Francis Joseph's conduct went beyond the scope of their limited consent.

If RACHEL LOMAS and/or AMBER LOMAS proves that their consent was obtained by mistake, duress, as a result of their incapacity, then you must find that they did not consent.

1 **1620. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS-- DIRECT**
2 **VICTIM--ESSENTIAL FACTUAL ELEMENTS**

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

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

10 2. That Kathleen Machado, Amber Lomas and Rachel Lomas suffered serious emotional distress;
11 and

12 3. That Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis
13 Joseph and Bishop Steven Blaire's negligence was a substantial factor in causing Kathleen Machado,
14 Amber Lomas and Rachel Lomas serious emotional distress.

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

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1 **1703. DEFAMATION PER QUOD--ESSENTIAL FACTUAL ELEMENTS (PRIVATE**
2 **FIGURE--MATTER OF PUBLIC CONCERN)**

3
4 Kathleen Machado claims that Fr. Joseph Illo, Fr. Francis Joseph,, Msg. Richard Ryan, Bishop
5 Steven Blaire , and The Roman Catholic Bishop of Stockton harmed them by making the following
6 statements: "All your mother wants to do is have sex with me. To establish this claim, Kathleen Machado
7 must prove all of the following:

8 **Liability**

9 1. That Fr. Joseph Illo, Fr. Francis Joseph,, Msg. Richard Ryan, Bishop Steven Blaire , and The
10 Roman Catholic Bishop of Stockton made the statement to a person or persons other than Kathleen
11 Machado;

12 2. That this person reasonably understood that the statement was about Kathleen Machado;

13 3. That because of the facts and circumstances known to the listener or readers of the statement, it
14 tended to injure Kathleen Machado in her occupation or to expose her to hatred, contempt, ridicule, or
15 shame or to discourage others from associating or dealing with her;

16 4. That the statement was false;

17 5. That Fr. Joseph Illo, Fr. Francis Joseph,, Msg. Richard Ryan, Bishop Steven Blaire , and The
18 Roman Catholic Bishop of Stockton failed to use reasonable care to determine the truth or falsity of the
19 statement(s);

20 6. That Kathleen Machado suffered harm to her property, business, profession, or occupation
21 including money spent as a result of the statement; and

22 7. That the statement was a substantial factor in causing Kathleen Machado.

23 **Actual damages**

24 If Kathleen Machado has proved all of the above, then she is entitled to recover if she proves that Fr.
25 Joseph Illo, Fr. Francis Joseph,, Msg. Richard Ryan, Bishop Steven Blaire , and The Roman Catholic
26 Bishop of Stockton's wrongful conduct was a substantial factor in causing any of the following actual
27 damages:

28 a. Harm to Kathleen Machado property, business, trade, profession, or occupation;

29 b. Expenses Kathleen Machado had to pay as a result of the defamatory statements;

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1 c. Harm to Kathleen Machado's reputation; or

2 d. Shame, mortification, or hurt feelings.

3 Punitive Damages

4 Kathleen Machado, may also recover damages to punish Fr. Joseph Illo, Fr. Francis Joseph,, Msg.
5 Richard Ryan, Bishop Steven Blaire , and The Roman Catholic Bishop of Stockton if they proves by
6 clear and convincing evidence that Fr. Joseph Illo, Fr. Francis Joseph,, Msg. Richard Ryan, Bishop
7 Steven Blaire , and The Roman Catholic Bishop of Stockton either knew the statements was false or had
8 serious doubts about the truth of the statement(s), and that they acted with malice, oppression, or fraud.

9 "Malice" means that Fr. Joseph Illo, Fr. Francis Joseph,, Msg. Richard Ryan, Bishop Steven Blaire ,
10 and The Roman Catholic Bishop of Stockton acted with intent to cause injury or that their conduct was
11 despicable and was done with a willful and knowing disregard of the rights or safety of another. A person
12 acts with knowing disregard when he or she is aware of the probable dangerous consequences of his or
13 her conduct and deliberately fails to avoid those consequences.

14 "Oppression" means that Fr. Joseph Illo, Fr. Francis Joseph,, Msg. Richard Ryan, Bishop Steven
15 Blaire , and The Roman Catholic Bishop of Stockton's conduct was despicable and subjected Kathleen
16 Machado to cruel and unjust hardship in knowing disregard of her rights.

17 "Despicable conduct" is conduct that is so mean, vile, base, or contemptible that it would be looked
18 down on and despised by reasonable people.

19 "Fraud" means that Fr. Joseph Illo, Fr. Francis Joseph,, Msg. Richard Ryan, Bishop Steven Blaire ,
20 and The Roman Catholic Bishop of Stockton intentionally misrepresented or concealed a material fact
21 and did so intending to deprive Kathleen Machado of property or of a legal right or otherwise to cause
22 her injury.

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1706. DEFINITION OF STATEMENT

3 The word "statement" in these instructions refers to any form of communication or representation,
4 including spoken or written words [or] pictures.

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3 **1707. FACT VERSUS OPINION**
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5 For Kathleen Machado, to recover, Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr.
6 Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire's statements must have been statements of fact,
7 not opinion. A statement of fact is a statement that can be proved to be true or false. An opinion may be
8 considered a statement of fact if the opinion suggests that facts exist.

9 In deciding this issue, you should consider whether the average reader or listener would conclude
10 from the language of the statement and its context that Roman Catholic Bishop of Stockton, Msgr
11 Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire was making a statement of
12 fact.
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1 **3600. CONSPIRACY--ESSENTIAL FACTUAL ELEMENTS**

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3 [Name of plaintiff] claims that [he/she] was harmed by [name of co-conspirator]'s ___(insert tort
4 theory)___ and that [name of defendant] is responsible for the harm because [he/she] was part of a
5 conspiracy to commit ___(insert tort theory)___ . A conspiracy is an agreement by two or more persons
6 to commit a wrongful act. Such an agreement may be made orally or in writing or may be implied by the
7 conduct of the parties.

8 If you find that [name of co-conspirator] committed a ___(insert tort theory)___ that harmed [name
9 of plaintiff], then you must determine whether [name of defendant] is also responsible for the harm.
10 [Name of defendant] is responsible if [name of plaintiff] proves both of the following:

11 1. That [name of defendant] was aware that [name of co-conspirator] [and others] planned to
12 ___(insert wrongful act)___; and

13 2. That [name of defendant] agreed with [name of co-conspirator] [and others] and intended that the
14 ___(insert wrongful act)___ be committed.

15 Mere knowledge of a wrongful act without cooperation or an agreement to cooperate is insufficient to
16 make [name of defendant] responsible for the harm.

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

19 [Name of plaintiff] is not required to prove that [name of defendant] personally committed a wrongful
20 act or that [he/she] knew all the details of the agreement or the identities of all the other participants.

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3700. INTRODUCTION

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

1 3701. TORT LIABILITY ASSERTED AGAINST PRINCIPAL-- ESSENTIAL FACTUAL
2 ELEMENTS
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4 Kathleen Machado, Amber Lomas and Rachel Lomas claim that they was harmed by Fr. Francis
5 Joseph.

6 Kathleen Machado, Amber Lomas and Rachel Lomas also claim that Roman Catholic Bishop of
7 Stockton, Msgr Richard J. Ryan, Fr. Joseph Ilo, Fr. Francis Joseph and Bishop Steven Blaire is
8 responsible for the harm because Fr. Francis Joseph was acting as their agent when the incident
9 occurred.

10 If you find that Fr. Francis Joseph's battery harmed Kathleen Machado, Amber Lomas and Rachel
11 Lomas, then you must decide whether Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr.
12 Joseph Ilo, Fr. Francis Joseph and Bishop Steven Blaire is responsible for the harm. Roman Catholic
13 Bishop of Stockton, Msgr Richard J. Ryan, and Bishop Steven Blaire is responsible if Kathleen
14 Machado, Amber Lomas and Rachel Lomas prove the following:

15 1. That Fr. Francis Joseph was Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr.
16 Joseph Ilo, Fr. Francis Joseph and Bishop Steven Blaire's agent; and

17 2. That Fr. Francis Joseph was acting within the scope of his when he harmed Kathleen Machado,
18 Amber Lomas, Rachel Lomas.
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SEXUAL ABUSE NOT WITHIN SCOPE OF AGENCY

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

1 **3900. INTRODUCTION TO TORT DAMAGES-- LIABILITY CONTESTED**
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3 If you decide that Kathleen Machado, Amber Lomas and Rachel Lomas have proved their claim
4 against Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph
5 and Bishop Steven Blaire, you also must decide how much money will reasonably compensate Kathleen
6 Machado, Amber Lomas and Rachel Lomas for the harm. This compensation is called "damages."

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

10 Kathleen Machado, Amber Lomas and Rachel Lomas does not have to prove the exact amount of
11 damages that will provide reasonable compensation for the harm. However, you must not speculate or
12 guess in awarding damages.

13 [The following are the specific items of damages claimed by Kathleen Machado, Amber Lomas and
14 Rachel Lomas:]

15 ____(Insert applicable instructions on items of damage.)____
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1 **3902. ECONOMIC AND NONECONOMIC DAMAGES**
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3 The damages claimed by Kathleen Machado Amber Lomas, Rachel Lomas for the harm caused by
4 Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and
5 Bishop Steven Blaire fall into two categories called economic damages and non-economic damages. You
6 will be asked on the verdict form to state the two categories of damages separately.
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1 **3903. ITEMS OF ECONOMIC DAMAGE**

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The following are the specific items of economic damages claimed by Kathleen Machado, Amber Lomas and Rachel Lomas:

____(Insert applicable instructions on items of economic damage.)____

1 **3904. PRESENT CASH VALUE**
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3 If you decide that Kathleen Machado, Amber Lomas and Rachel Lomas harm includes future
4 economic damages for then the amount of those future damages must be reduced to their present cash
5 value. This is necessary because money received now will, through investment, grow to a larger amount in
6 the future.

7 To find present cash value, you must determine the amount of money that, if reasonably invested
8 today, will provide Kathleen Machado, Amber Lomas and Rachel Lomas with the amount of their future
9 damages.

10 You will be provided with a table to help you calculate the present cash value.
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1 **3905. ITEMS OF NONECONOMIC DAMAGE**

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3 The following are the specific items of noneconomic damages claimed by Kathleen Machado, Amber
4 Lomas, and Rachel Lomas:

5 ___(Insert applicable instructions on items of noneconomic damage)___.
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1 **3924. NO PUNITIVE DAMAGES**

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3 You must not include in your award any damages to punish or make an example of Roman Catholic
4 Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire.
5 Such damages would be punitive damages, and they cannot be a part of your verdict. You must award
6 only the damages that fairly compensate Kathleen Machado, Amber Lomas, Rachel Lomas for their loss.
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1 **3925. ARGUMENTS OF COUNSEL NOT EVIDENCE OF DAMAGES**
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3 The arguments of the attorneys are not evidence of damages. Your award must be based on your
4 reasoned judgment applied to the testimony of the witnesses and the other evidence that has been
5 admitted during trial.
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1 **3930. MITIGATION OF DAMAGES (PERSONAL INJURY)**
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3 If you decide Roman Catholic Bishop of Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis
4 Joseph and Bishop Steven Blaire is responsible for the original harm, Kathleen Machado, Amber Lomas
5 and Rachel Lomas are not entitled to recover damages for harm that Roman Catholic Bishop of
6 Stockton, Msgr Richard J. Ryan, Fr. Joseph Illo, Fr. Francis Joseph and Bishop Steven Blaire proves
7 Kathleen Machado, Amber Lomas and Rachel Lomas could have avoided with reasonable efforts or
8 expenditures.

9 You should consider the reasonableness of Kathleen Machado, Amber Lomas and Rachel Lomas'
10 efforts in light of the circumstances facing them at the time, including their ability to make the efforts or
11 expenditures without undue risk or hardship.

12 If Kathleen Machado, Amber Lomas and Rachel Lomas made reasonable efforts to avoid harm, then
13 your award should include reasonable amounts that she spent for this purpose.
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1 **5000. DUTIES OF THE JUDGE AND JURY**

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3 Members of the jury, you have now heard all the evidence and the closing arguments of the
4 attorneys. You will have a copy of my instructions with you when you go to the jury room to deliberate. I
5 have provided each of you with your own copy of the instructions.

6 You must decide what the facts are. You must consider all the evidence and then decide
7 what you think happened. You must decide the facts based on the evidence admitted in this trial. You
8 must not let bias, sympathy, prejudice, or public opinion influence your decision.

9 I will now tell you the law that you must follow to reach your verdict. You must follow the
10 law exactly as I give it to you, even if you disagree with it. If the attorneys have said anything different
11 about what the law means, you must follow what I say.

12 In reaching your verdict, do not guess what I think your verdict should be from something I
13 may have said or done.

14 Pay careful attention to all the instructions that I give you. All the instructions are important
15 because together they state the law that you will use in this case. You must consider all of the instructions
16 together. After you have decided what the facts are, you may find that some instructions do not apply. In
17 that case, follow the instructions that do apply and use them together with the facts to reach your verdict.

18 If I repeat any ideas or rules of law during my instructions, that does not mean that these
19 ideas or rules are more important than the others are. In addition, the order of the instructions does not
20 make any difference.

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5001. INSURANCE

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

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5002. EVIDENCE

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3 Sworn testimony, documents, or anything else may be admitted into evidence. You must
4 decide what the facts are in this case from the evidence you have seen or heard during the trial. You may
5 not consider as evidence anything that you saw or heard when court was not in session, even something
6 done or said by one of the parties, attorneys, or witnesses.

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

10 The attorneys' questions are not evidence. Only the witnesses' answers are evidence. You
11 should not think that something is true just because an attorney's question suggested that it was true.
12 [However, the attorneys for both sides have agreed that certain facts are true. This agreement is called a
13 stipulation. No other proof is needed and you must accept those facts as true in this trial.]

14 Each side had the right to object to evidence offered by the other side. If I sustained an
15 objection to a question, you must ignore the question. If the witness did not answer, you must not guess
16 what he or she might have said or why I sustained the objection. If the witness already answered, you
17 must ignore the answer.

18 During the trial I granted a motion to strike testimony that you heard. You must totally
19 disregard that testimony. You must treat it as though it did not exist.
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1 **5003. WITNESSES**

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3 A witness is a person who has knowledge related to this case.

4 You will have to decide whether you believe each witness and how important each witness's
5 testimony is to the case. You may believe all, part, or none of a witness's testimony.

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

8 (a) How well did the witness see, hear, or otherwise sense what he or she described in
9 court?

10 (b) How well did the witness remember and describe what happened?

11 (c) How did the witness look, act, and speak while testifying?

12 (d) Did the witness have any reason to say something that was not true? Did the witness
13 show any bias or prejudice? Did the witness have a personal relationship with any of the parties involved
14 in the case? Does the witness have a personal stake in how this case is decided?

15 (e) What was the witness's attitude toward this case or about giving testimony?

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

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

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

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

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2 **5005. MULTIPLE PARTIES**

3 There are three (3) plaintiffs in this trial. You should decide the case of each plaintiff
4 separately as if it were a separate lawsuit.

5 Each plaintiff is entitled to separate consideration of his or her own claim(s). Unless I tell you
6 otherwise, all instructions apply to each plaintiff.]

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

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5006. NON-PERSON PARTY

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

7 When I use words like "person" or "he" or "she" in these instructions to refer to a party, those
8 instructions also apply to Roman Catholic Bishop of Stockton.
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1 advance to simply add up the amounts each juror thinks is right and then make the average your verdict.

2 You may take breaks, but do not resume your discussions until all of you are back in the jury
3 room.

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1 **5010. TAKING NOTES DURING THE TRIAL**
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3 If you have taken notes during the trial you will now be allowed to take your notebooks with
4 you into the jury room.

5 You may use your notes only to help you remember what happened during the trial. Your
6 independent recollection of the evidence should govern your verdict and you should not allow yourself to
7 be influenced by the notes of other jurors if those notes differ from what you remember.

8 The court reporter made a record of everything that was said. If during deliberations you
9 have a question about what the witness said, you may ask in writing for the testimony to be read to you.
10 You must accept the court reporter's record as accurate.

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1 **5011. READING BACK OF TRIAL TESTIMONY IN JURY ROOM**
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3 You may request in writing that trial testimony be read to you. I will have the court reporter
4 read the testimony to you in the jury room. You may request that all or a part of a witness's testimony be
5 read. There is no written transcript of the testimony, only the court reporter's record.

6 Reading testimony takes as long as it took for the testimony to be presented in court. Your
7 request should be as specific as possible. It will be helpful if you can state:

- 8 1. The name of the witness;
- 9 2. The subject of the testimony you would like to have read; and
- 10 3. The name of the attorney or attorneys asking the questions when the testimony was given.

11 The court reporter is not permitted to talk with you when she or he is reading the testimony
12 you have requested.

13 While the court reporter is in the jury room, you may not deliberate or discuss the case. You
14 must conduct yourself as if the testimony were being presented in court and you were seated in the jury
15 box.

16 You may not ask the court reporter to read testimony that was not specifically mentioned in a
17 written request.

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/23/05 10:00 AM 41 met at Stockton, California

Hon. Elizabeth Humphreys

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

Nature of proceedings: Jury trial;

Hearing held

Matter is continued to _____ in Dept. _____ due to _____

Dropped Granted Denied

Twelve jurors and three alternates are present in the courtroom.

Sworn and examined on behalf of the defendants Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton, a corporation sole:

Don Bali

Tammy Bowman

Diane Kelley

Edward E. Tobias.

Rose Wyeth is called to testify as a rebuttal witness on behalf of the plaintiffs. The Court reminds her she is still under oath.

The Plaintiffs rest on the rebuttal case.

continued on page 2.

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

Out of the presence of the jury, Mr. Boskovich motions to amend the Complaint as to the 3rd Cause of Action to conform to proof. Motion is granted. Defense motions for a directed verdict on the 2nd Cause of Action as to Rachel and on psychological damage are denied. The motion for non-suit regarding libel is granted. There is no cause of action for libel as to Fr. Arakal.

The jury is present in the courtroom.

Mr. MacKoul and Mr. Boskovich present closing arguments on behalf of the plaintiffs.

Mr. Kozina and Mr. Coughlan present closing arguments on behalf of the defendants.

Mr. Boskovich presents arguments in rebuttal on behalf of the plaintiffs.

The Court admonishes and excuses the jury for the evening. Further Jury Trial is continued to March 24, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

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

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2453 Grand Canal Boulevard, Second Floor
3 Stockton, California 95207-8253
Telephone (209) 477-3833
4 VLADIMIR F. KOZINA, ESQ.
CA State Bar No. 095422

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8 PAUL N. BALESTRACCI
CA State Bar No. 083987

9 Attorneys for Defendants

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

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

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

17 **Plaintiffs,**

18 **vs.**

19 **FR. JOSEPH ILLO, FR. FRANCIS**
20 **JOSEPH aka FR. FRANCIS ARAKAL, FR.**
21 **RICHARD J. RYAN, BISHOP STEVEN**
22 **BLAIRE and THE DIOCESE OF**
STOCKTON, et al.,

23 **Defendants.**

CASE NO. CV018440

NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
FOR JUDGMENT OF NONSUIT

24 You are hereby notified that an Order Granting Defendants' Motion for Judgment of
25 Nonsuit has been granted by the above-entitled court. A copy of the Order is attached hereto and
26 incorporated herein by this reference.

FILED
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STOCKTON

05 MAY 23 AM 3:51

DEPUTY CLERK
Juedda Reed
DEPUTY

Dated: March 22, 2005

Mayall, Hurley, Knutsen, Smith & Green

By: 
MICHAEL L. PHILLIPS

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5 CA State Bar No. 232978

Filed MAR 14 2005
ROSA JUNQUEIRO, CLERK
By CHARLENE GRAY
DEPUTY

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9 CA State Bar No. 083987

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

12 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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

21
22 ORDER

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

28 Order

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

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

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

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

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17 DATED: MAR 1 1 2008

18 ELIZABETH HUMPHREYS
19 JUDGE OF THE SUPERIOR COURT
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN}

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

DOCUMENT(S) SERVED: NOTICE OF ENTRY OF ORDER

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

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

Via Federal Express

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

Via California Overnight Mail

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

Via California Overnight

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

Via California Overnight

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

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

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

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

1 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Served and executed on March 22, 2005, at Stockton, California.

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

*** FILED**
SUPERIOR COURT STOCKTON

05 MAR 23 AM 9:50

DEBRA JUNGQUIRO, CLERK
Debra - Reed
BY _____ DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

KATHLEEN MACHADO as an individual)	CASE NO. CV018440
and as Guardian Ad Litem for RACHEL)	
LOMAS and AMBER LOMAS,)	NOTICE OF COURT'S RULING
)	[CCP 1019]
Plaintiffs,)	
)	
vs.)	
)	
FR. JOSEPH ILLO, FR. FRANCIS)	
JOSEPH aka FR. FRANCIS ARAKAL, FR.)	
RICHARD J. RYAN, BISHOP STEVEN)	
BLAIRE and THE DIOCESE OF)	
STOCKTON, et al.,)	
)	
Defendants.)	
)	

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

YOU ARE HEREBY NOTIFIED that the Honorable Elizabeth Humphries, Judge of the
Superior Court of San Joaquin County, granted the motion of defendants FATHER JOSEPH

1 ILLO, and THE ROMAN CATHOLIC BISHOP OF STOCKTON, a Corporation Sole, and
2 FATHER FRANCIS JOSEPH for an order granting judgment of nonsuit pursuant to Code of
3 Civil Procedure Section 581c(a) on plaintiffs' opening statement as to the issue of negligence per
4 se within Plaintiffs' Third Cause of Action based on the following statutes:

- 5 1. Penal Code Section 261.5
- 6 2. Penal Code Section 288a(b)(1)

7 The Court Ordered, adjudicated and decreed that the motion of defendants FATHER
8 JOSEPH, MONSIGNOR RICHARD RYAN, BISHOP STEVEN E. BLAIRE, and THE ROMAN
9 CATHOLIC BISHOP OF STOCKTON, a Corporation Sole be and hereby is, granted, that
10 Plaintiffs take nothing by way of the above issues within the Third Cause of Action of their
11 complaint of file herein, and that this order shall operate as an adjudication on the merits of the
12 above-issues.
13

14
15 Dated: March 10, 2005

Mayall, Hurley, Knutsen, Smith & Green

16
17 By: 

VLADIMIR F. KOZINA

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2
3
PROOF OF SERVICE

4 *STATE OF CALIFORNIA, COUNTY OF SAN JOAQUIN}*

5 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:

6 **DOCUMENT(S) SERVED:** Notice of Ruling Re Order Granting Defendants' Motion for
7 Judgment of Nonsuit

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

9 GEORGE J. MACKOUL, ESQ.
10 SABBAAH AND MACKOUL

11 ANTHONY BOSKOVICH, ESQ.

12 MICHAEL COUGHLAN, ESQ.

13 **All attorneys listed above were served with the Document referred to above**
14 **on March 10, 2005 at time of trial taking place in the above-entitled matter.**

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

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

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

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

27 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
28 Served and executed on March 10, 2005, at Stockton, California.

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VLADIMIR F. KOZINA

The Court rules on the motions for non-suit as follows:

Motion for non-suit as to punitive damages

4th cause of action - intentional infliction of emotional distress - is denied as to Rachel Lomas and Amber Lomas;

5th cause of action - intentional infliction of emotional distress - is granted as to Kathleen Machado regarding punitive damages;

8th cause of action - civil conspiracy - is granted;

1st cause of action - battery - is denied as to Rachel Lomas and granted as to Amber Lomas.

2nd cause of action - sexual battery - is denied as to Rachel Lomas and granted as to Amber Lomas.

Motion for non-suit regarding Libel and Conspiracy is granted as to Defendant Fr. Joseph Arakal. The Motion is denied as to Defendants Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton with Mr. Boskovich reserving the right to re-open.

Motion for non-suit regarding psychological damages is joined by Mr. Coughlan on behalf of the Defendant Fr. Joseph Arakal. The Motion for non-suit is denied.

Exhibits which were introduced during examination of witnesses are listed on the Record of Exhibit lists which shall be attached to the last minute order of this trial.

Further Jury Trial is continued to March 23, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

1 The plaintiffs have rested and this motion is brought at this time based on the court's grant of the right
2 to proceed with same without prejudice by virtue of Defendants having called their first witness.

3 Court Is Empowered to Grant Non-Suit on Issues Only

4 Code of Civil Procedure Section 581c also provides:

6 "(b) If it appears that the evidence presented, or to be presented,
7 supports the granting of the motion as to some but not all of the
8 issues involved in the action, the court shall grant the motion as to
those issues and the action shall proceed as to the issues remaining."

9 Accordingly this court would be empowered to grant non-suit on particular issues that are
10 within the confines of the case, without having to reach causes of action, if necessary.

11 **PLAINTIFFS HAVE FAILED TO ESTABLISH A SECOND CAUSE OF ACTION**

12 The plaintiffs have alleged and made the prayer of the second cause of action dependent upon
13 Code of Civil Procedure § 1708.5. **No such statute exists.** Plaintiffs might argue that it was meant to
14 be Civil Code Section 1708.5 although that is highly unlikely since the complaint, even in its amended
15 form, sets out the section multiple times as Code of Civil Procedure Section 1708.5
16

17 A non-suit is required in this matter.

18 **PLAINTIFFS HAVE FAILED TO ESTABLISH ELEMENTS REQUISITE**
19 **FOR THE REMAINING PORTIONS OF THE THIRD CAUSE OF ACTION**

20 The court has already granted non-suit as to the issues in the third cause of action, with the
21 plaintiffs' counsel stipulating on the record that they never had facts to support those issues. The
22 remaining claims are predicated on alleged violations of Penal Code Section 243.4 and 243.
23

24 It is pointed out, at the outset, that the only potentially applicable statute, Penal Code Section
25 243.4 requires intentional conduct and thus can not be the basis of a negligence cause of action.

26 Again, realizing the plaintiffs submitted, and the court approved an amended complaint by way
27 of a motion in limine, the plaintiffs continue to contend that these remaining sections constitute a basis
28 for negligence per se.

1 A copy of Penal Code Section 243 is attached. This is a sentencing statute, not one that sets
2 forth a statute for the protection of a person or class of persons for whose benefit the statute was
3 adopted.

4 Clearly, no cause of action can be founded on this statute.

5 Penal Code Section 243.4, a copy of which is attached as Exhibit B, clearly requires that the
6 plaintiffs would have to establish that the alleged conduct of Fr. Arakal was "for the purpose of sexual
7 arousal, sexual gratification, or sexual abuse" (Emphasis Added)

8 *Ramirez v. Plough, Inc.* (1993) 6 Cal.4th 539, cited in the Use Notes of CACI 418 specifically
9 refers to Justice Tobriners opinion in *Clinkscales v. Carver* (1943) 22 Cal.2d 72 for the proposition
10 that criminal statutes can support a negligence per se instruction. A reading of that case clearly
11 indicates that it applies only to general intent crimes. *Clinkscales*, supra, is a case involving a motor
12 vehicle accident and a general intent statute, then Vehicle Code section (*Clinkscales*, supra, 74)

13 "577 that provided: "Vehicles Must Stop at Through Highways The driver of any vehicle
14 upon approaching any entrance of a highway or intersection signposted with a stop-sign
15 as provided in this code shall stop at such sign before entering or crossing such highway
16 or intersection." Section 552 of the Vehicle Code provided: "Vehicle Entering Through
17 Highway. The driver of any vehicle which has stopped as required by this code at the
18 entrance to a through highway shall yield the right of way to other vehicles which have
19 entered the intersection from the through highway or which are approaching so closely on
20 the through highway as to constitute an immediate hazard, but said driver having so
21 yielded may proceed and the drivers of all other vehicles approaching the intersection on
22 the through highway shall yield the right of way to the vehicle so about to enter or cross
23 the through highway."

24 The resolution of January 4, 1927, provided: "It is hereby resolved, found and ordered
25 that the general safety of the public and the proper and reasonable regulation and control
26 of traffic on the public roads and highways in this county and outside of incorporated
27 cities and towns require the establishment of 'Boulevard stops' at all roads intersecting all
28 county and state highways in Imperial County outside of incorporated cities and towns,
and such 'Boulevard stops' are hereby established at said intersections as provided and
authorized by Ordinance No. 82 of this County."

The crucial passage, however occurs at 75-76 of the *Clinkscales*, supra:

"Even if the conduct cannot be punished criminally because of irregularities in the
adoption of the prohibitory provisions, the legislative standard may nevertheless apply if

no "B"
attached

1 it is an appropriate measure for the defendant's conduct. When the court accepts the
2 standard it rules in effect that defendant's conduct falls below that of a reasonable man as
3 the court conceives it. It does no more than it does in any ruling that certain acts or
4 omissions amount as a matter of law to negligence. (Restatement: Torts, sec. 285.) [1b]"

5 It is very clear, that the type of statute this opinion refers to is one that sets a reasonableness
6 standard. This is that case with statutes requiring only general intent, assuming the other elements for
7 imposition of negligence per se exist. It is not, and cannot be construed to apply to those that proscribe
8 conduct requiring specific intent or purpose.

9 There is simply no basis for the cause of action for negligence per se based on these statutes.

10 **CONCLUSION**

11 The evidence presented and the law require a grant of the motion for an order of non suit. Such
12 is requested.

13 Dated: 3-21-05

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

14 By


Vladimir F. Kozina

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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:

**FR. JOSEPH ILLO, MSGR. RICHARD RYAND, BISHOP STEVEN BLAIRE, AND
ROMAN CATHOLIC BISHOP OF STOCKTON, A CORPORATION SOLE'S TRIAL
MOTION FOR NON-SUIT RE SECOND AND THIRD CAUSES OF ACTION**

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

GEORGE J. MACKOUL, ESQ.
SABBAH AND MACKOUL
49 LOCUST STREET
FALMOUTH, MASS 02540
Fax: (508)495-4115

ANTHONY BOSKOVICH, ESQ.
28 NORTH FIRST ST., 6TH FLOOR
SAN JOSE, CA 95113-1210
Fax: (408)286-5170

PAUL N. BALESTRACCI, ESQ.
NEUMILLER & BEARDSLEE
P.O. BOX 20
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MICHAEL COUGHLAN, ESQ.
LAW OFFICES OF MICHAEL D. COUGHLAN
3031 W. MARCH LANE, #210 WEST
STOCKTON, CA 95219
Fax: 957-5338

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

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

1 MAXALL, HURLEY, KNUTSEN, SMITH & GREEN
2 Vladimir F. Kozina, Esq., SB No. 95422
2453 Grand Canal Blvd., Second Floor
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6 Paul N. Balestracci, Esq. SB No. 83987
7 Post Office Box 20
8 Stockton, CA 95201-3020
9 Telephone: (209) 948-8200 Facsimile: (209) 948-4910

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

12 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

13 KATHLEEN MACHADO INDIVIDUALLY AND AS)
14 GUARDIAN AD LITEM FOR RACHEL LOMAS AND)
15 AMBER LOMAS)

16 Plaintiff,

17 vs.

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

23 No. CV 018440

24 FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
25 BISHOP STEVEN BLAIRE, AND
26 ROMAN CATHOLIC BISHOP OF STOCKTON, A
27 CORPORATION SOLE'S TRIAL MOTION
28 FOR NON-SUIT RE PSYCHOLOGICAL
DAMAGES

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

29 MOTION FOR NON-SUIT IS APPROPRIATE

30 Code of Civil Procedure section 581c provides in pertinent part:

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

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Filed MAR 18 2005
ROSA JUNQUEIRO, CLERK
By Charlene Gray
DEPUTY

1 The plaintiffs have rested and this motion is brought at this time based on the court's grant of the right
2 to proceed with same without prejudice by virtue of Defendants having called their first witness.

3 **Court Is Empowered to Grant Non-Suit on Issues Only**

4 Code of Civil Procedure Section 581c also provides:

5
6 “(b) If it appears that the evidence presented, or to be presented,
7 supports the granting of the motion as to some but not all of the
8 issues involved in the action, the court shall grant the motion as to
those issues and the action shall proceed as to the issues remaining.”

9 Accordingly this court would be empowered to grant non-suit on particular issues that are
10 within the confines of the case, without having to reach causes of action, if necessary.

11 **PLAINTIFFS HAVE FAILED TO ESTABLISH PSYCHOLOGICAL DAMAGE TO A PROBABILITY**

12 Plaintiffs called Dr. Sonnee D. Weedn as an expert regarding the psychological damages
13 alleged to have been suffered by the plaintiffs. As the court may recall, the testimony was at best
14 equivocal concerning the various sources that led to the plaintiffs presentation during the November
15 12, 2004 litigation related examination. At no time did Dr. Weedn testify, and at no time was she
16 asked by Plaintiffs or any other party, if the injuries claimed were related to a psychological or medical
17 probability to the incidents underlying this litigation.

18 **PROOF TO A PSYCHOLOGICAL PROBABILITY REQUIRED**

19 Clearly, as the proponent of the evidence relating to psychological damages, the plaintiffs have
20 the burden of going forward with the evidence and presenting a prima facia case relating the incidents
21 underlying this litigation with the psychological complaints forwarded, particularly where diagnosis
22 and prognosis made require expert opinion, as here. This requires that the plaintiff show that there is a
23 reasonable psycholgical probability, not a mere possibility, that the injury is related to the incidents
24 underlying this litigation in order for the plaintiffs to meet their burden. *Ochoa v. Pacific Gas &*
25 *Electric Co.* (1998) 61 Cal.App.4th 1480. As was stated in the case of *Jones v Ortho Pharmaceutical*
26 *Corporation* (1985) 163 CA3d 396, 402:

1 "The law is well settled that in a personal injury action, causation must be proven
2 within a reasonable medical probability based upon competent expert testimony.
3 Mere possibility alone is insufficient to establish a prima facie case." [citations] .
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5 In the present instance, the psychological testimony proffered at the very best raises a
6 "possibility" that the psychological injuries and their duration all arise out of incident. It should be
7 remembered that the testimony by Dr. Weedn Provided multiple reasons, for their current complaints
8 without identifying a single cause, and in fact, stated that the tests she relied so much upon would not
9 provide the reason for the conditions exhibited. See also *Johnston v Brother* (1961) 190 CA2d 464 see
10 also *Simmons v West Covina Medical Clinic* (1989) 212 CA3d 696.
11

12 **ONLY REASONABLE EXPENSES FOR MEDICAL TREATMENT**
13 **ARE RECOVERABLE**

14 The rule is well settled that in an action involving personal injuries, plaintiff is entitled to
15 recover only reasonable expenses necessarily incurred by him in securing medical or surgical
16 treatment. *McChristian v Popkin* (1946) 75 CA2d 249. This means only the reasonable value of the
17 care and treatment and not the sums actually paid or liability incurred for such treatment. *Guerra v*
18 *Balestrieri* (1954) 127 CA 2d 511.
19

20 Thus it is plaintiff's burden to show not only that the treatment was reasonable and necessary
21 utilizing appropriate expert testimony pursuant to Evidence Code § 803 et. seq., but to demonstrate,
22 through expert testimony, the reasonableness of the cost of said treatment and future treatment. A
23 failure to meet this burden will preclude an award for damages.

24 The Plaintiffs failed to establish reasonableness, merely asked what rates were, and in fact the
25 court sustained an objection to the hourly rate that would be charged. The testimony concerning future
26 medicals was speculative at best as Dr. Weedn consistently testified that it would be "possible" not that
27 it would occur to a reasonable probability. Speculative damages cannot be awarded (See former BAJI
28 Nos. 14.60 and 14.61)


Conclusion

Based on the above, a non-suit is requested with respect to any and all claims of psychological damage dependent upon the testimony of Dr. Weedn, including but not limited to all diagnosis and costs claimed.

Dated:

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

By _____
Vladimir F. Kozina



St. Joseph's Church

1813 OAKDALE ROAD • MODESTO, CALIFORNIA 95355 • TELEPHONE 551-4973 • FAX 551-3213

July 20, 2002

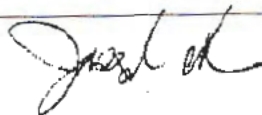
Mrs. Elaine Shields
1548 Ford Ave.
Modesto, CA 95350

Dear Elaine,

I am writing to clarify, in writing, what we discussed this morning. I and the other staff here at St. Joseph's are disappointed and frustrated by your support of Kathleen Machado, who has created division and slander in our parish. I cannot operate a parish under these conditions any longer and must know that I have the support and confidence of those I have entrusted with parish responsibilities. We all appreciate the work you have done thus far in the Legion of Mary, in bringing communion to the hospitals, and in your liturgical ministries. At one time you were a person I had implicit trust in and we worked very well together when you served as parish sacristan. I am deeply saddened that this confidence has been broken.

You must decide whether what Kathleen Machado says about me, about Fr. Francis, and about our staff is true, or whether what I say is true. You decide if you trust me, Fr. Francis, and our staff, or whether you trust her. You cannot continue to support her and her slanderous behavior if you want to be a part of our church ministries. I give you two months to make your choice, and I would like to meet with you again around September 20 to determine if you have made a decision.

Yours sincerely in Christ,



Fr. Joseph Illo
Pastor

MAC-0226

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

Vladimir F. Kozina, Esq., **SB No. 95422**
2453 Grand Canal Blvd., Second Floor
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Paul N. Balestracci, Esq. **SB No. 83987**
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Attorneys for: Bishop Stephen Blaire, Msgr. Richard Ryan, Fr. Joseph Illo,
Roman Catholic Bishop of Stockton, a corporation sole, St. Joseph's Church

Filed MAR 21 2005

ROSA JUNQUEIRO, CLERK

By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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

) **No. CV 018440**

Plaintiff,

vs.

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

*duplicate - CM
not posted*

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

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

Defendants.

MOTION FOR NON-SUIT IS APPROPRIATE

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19 **PROOF TO A PSYCHOLOGICAL PROBABILITY REQUIRED**

20 Clearly, as the proponent of the evidence relating to psychological damages, the plaintiffs have
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22 failure to meet this burden will preclude an award for damages.
23

24 The Plaintiffs failed to establish reasonableness, merely asked what rates were, and in fact the
25 court sustained an objection to the hourly rate that would be charged. The testimony concerning future
26 medicals was speculative at best as Dr. Weedn consistently testified that it would be "possible" not that
27 it would occur to a reasonable probability. Speculative damages cannot be awarded (See former BAJI
28 Nos. 14.60 and 14.61)

Conclusion

Based on the above, a non-suit is requested with respect to any and all claims of psychological damage dependent upon the testimony of Dr. Weedn, including but not limited to all diagnosis and costs claimed.

Dated: 3-21-06

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

By  Vladimir F. Kozina

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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:

**FR. JOSEPH ILLO, MSGR. RICHARD RYAND, BISHOP STEVEN BLAIRE, AND
ROMAN CATHOLIC BISHOP OF STOCKTON, A CORPORATION SOLE'S TRIAL
MOTION FOR NON-SUIT RE PSYCHOLOGICAL DAMAGES**

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

GEORGE J. MACKOUL, ESQ.
SABBAH AND MACKOUL
49 LOCUST STREET
FALMOUTH, MASS 02540
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ANTHONY BOSKOVICH, ESQ.
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PAUL N. BALESTRACCI, ESQ.
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P.O. BOX 20
STOCKTON, CA 95201-3020
Fax: 948-4910

MICHAEL COUGHLAN, ESQ.
LAW OFFICES OF MICHAEL D. COUGHLAN
3031 W. MARCH LANE, #210 WEST
STOCKTON, CA 95219
Fax: 957-5338

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

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

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

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

4 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 March 21, 2005, at Stockton, California.

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6 SHERI SIGMAN

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MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

Vladimir F. Kozina, Esq., SB No. 95422
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Telephone: (209) 948-8200 Facsimile: (209) 948-4910

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

cy
FILED MAR 18 2005
REC'D
By Charlene King

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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

No. CV 018440

Plaintiff,

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

vs.

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

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

Defendants.

MOTION FOR NON-SUIT IS APPROPRIATE

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

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

1 The plaintiffs have rested and this motion is brought at this time based on the court's grant of the right
2 to proceed with same without prejudice by virtue of Defendants having called their first witness.

3 Court Is Empowered to Grant Non-Suit on Issues Only

4 Code of Civil Procedure Section 581c also provides:

5
6 " (b) If it appears that the evidence presented, or to be presented,
7 supports the granting of the motion as to some but not all of the
8 issues involved in the action, the court shall grant the motion as to
9 those issues and the action shall proceed as to the issues remaining."

10 Accordingly this court would be empowered to grant non-suit on particular issues that are
11 within the confines of the case, without having to reach causes of action, if necessary.

12 **PLAINTIFFS HAVE FAILED TO ESTABLISH ELEMENTS FOR LIBEL**

13 Plaintiffs have alleged that a libelous statement was published in written form by Fr. Illo as to
14 plaintiff Kathleen Machado. As evidence of that, they presented only one writing, that of Elaine
15 Shields. A copy of that letter is attached to this motion.

16 What is required to establish libel was discussed in the matter of *Barnes-Hind, Inc. v. Superior Court*
17 (*Allergan Pharmaceuticals, Inc.*) (1986) 181 Cal.App.3d 377 at 382

18 "A **libel** which is defamatory of the plaintiff without the necessity of explanatory matter,
19 such as an inducement, innuendo or other extrinsic fact, is said to be a **libel** on its face.
20 Defamatory language not libelous on its face is not actionable unless the plaintiff alleges
21 and proves that he has suffered special damage as a proximate result thereof. Special
22 damage is defined in Section 48a of this code." The definition: "'Special damages' are all
23 damages which plaintiff alleges and proves that he has suffered in respect to his property,
24 business, trade, profession or occupation, including such amounts of money as the
25 plaintiff alleges and proves he has expended as a result of the alleged **libel**, and no other."
26 (Civ. Code, § 48a, subd. 4(b).)

27 The court is requested to look at the language of the letter to Elaine Shields. This letter simply
28 indicates that she must chose to determine who is telling the truth and act accordingly. It is not libelous
on its face, and it is submitted it is not libelous at all. If the plaintiff's should attempt to ague that it is
otherwise libelous, they would have been required to demonstrate special damages. They have not.

1 As a consequence, a non-suit as to this issue is requested.

2 **THE PLAINTIFFS HAVE FAILED TO ESTABLISH A CIVIL CONSPIRACY**

3 As was pointed out in the matter of *117 Sales Corp. v. Olsen* (1978) 80 Cal.App.3d 645, 649

4 “[3] A civil conspiracy is simply a corrupt agreement; it is: "... a combination of
5 two or more persons to accomplish an evil or unlawful purpose." (Southern Cal.
6 Disinfecting Co. v. Lomkin, 183 Cal.App.2d 431, 448 [7 Cal.Rptr. 43].) [4] To
7 state a cause of action for civil conspiracy, facts must be alleged which show the
8 formation and operation of a conspiracy, the wrongful act of any of the
9 conspirators thereto and damage resulting therefrom. (*Orloff v. Metropolitan Trust*
10 *Co.*, 17 Cal.2d 484, 488 [110 P.2d 396]; *Wise v. Southern Pacific Co.*, 223
11 Cal.App.2d 50, 64-65 [35 Cal.Rptr. 652].)”

12 Random House Websters College Dictionary, 2 Edition defines corrupt as guilty of dishonest
13 practices, debased in character, depraved, infected, tainted, decayed or putrid. There must of necessity
14 be a “corrupt agreement”. Nothing in the evidence presented demonstrates anything even remotely
15 approaching the threshold of such an agreement. These facts, taken in light of the plaintiff’s burden of
16 proof, leads to only one possible ruling, a grant of a non suit on the issue of conspiracy.

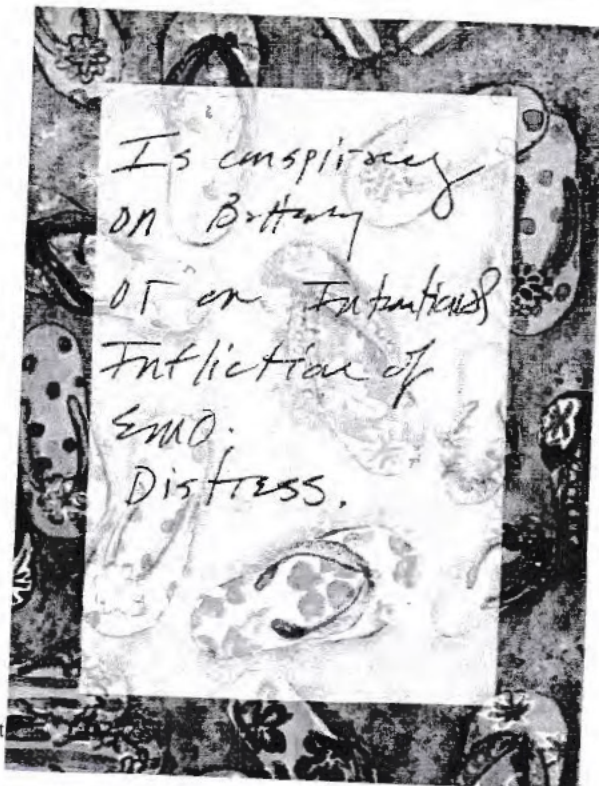
17 **CONCLUSION**

18 An order granting non-suit as to libel and conspiracy is requested.

19 Dated: 3-18-05

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

20 By 
21 Vladimir F. Kozina



MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

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Filed MAR 21 2005
By Charlene Gray
FEB 22 2005

Neumiller & Beardslee

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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

No. CV 018440

Plaintiff,

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

vs.

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not pasted*

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

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

Defendants.

MOTION FOR NON-SUIT IS APPROPRIATE

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10 *Co.*, 17 Cal.2d 484, 488 [110 P.2d 396]; *Wise v. Southern Pacific Co.*, 223
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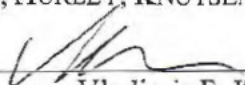
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16 proof, leads to only one possible ruling, a grant of a non suit on the issue of conspiracy.

17 **CONCLUSION**

18 An order granting non-suit as to libel and conspiracy is requested.

19 Dated: 3-21-05

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

20 By  _____
21 Vladimir F. Kozina

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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:

**FR. JOSEPH ILLO, MSGR. RICHARD RYAND, BISHOP STEVEN BLAIRE, AND
ROMAN CATHOLIC BISHOP OF STOCKTON, A CORPORATION SOLE'S TRIAL
MOTION FOR NON-SUIT RE LIBEL AND CONSPIRACY**

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

GEORGE J. MACKOUL, ESQ.
SABBAH AND MACKOUL
49 LOCUST STREET
FALMOUTH, MASS 02540
Fax: (508)495-4115

ANTHONY BOSKOVICH, ESQ.
28 NORTH FIRST ST., 6TH FLOOR
SAN JOSE, CA 95113-1210
Fax: (408)286-5170

PAUL N. BALESTRACCI, ESQ.
NEUMILLER & BEARDSLEE
P.O. BOX 20
STOCKTON, CA 95201-3020
Fax: 948-4910

MICHAEL COUGHLAN, ESQ.
LAW OFFICES OF MICHAEL D. COUGHLAN
3031 W. MARCH LANE, #210 WEST
STOCKTON, CA 95219
Fax: 957-5338

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

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

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

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3 collection on this same date, a sealed envelope addressed to the person(s) at the address(es) set forth above, into a depository box of the overnight service listed next to each address, at Stockton, California.

4 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 March 21, 2005, at Stockton, California.

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6 SHERI SIGMAN

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

03/17/05 10:00 AM 41 met at Stockton, California

Hon. Elizabeth Humphreys

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

Nature of proceedings: Jury trial;

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

All jurors and alternates are present in the courtroom.

Sworn and examined on behalf of the Plaintiffs:

Richard Sipe, deemed an expert on sexual abuse of minors by priests

Sonnee Delight Weedn, deemed an expert in clinical psychology.

Plaintiffs rest.

Mr. Kozina indicates he intends to present motions at this time. The Court will rule on the motions at another time with no prejudice to the Defendants.

Rosario Hernandez is sworn and examined on behalf of the Defendants, Fr. Joseph Illo, Fr. Richard Ryan, Bishop Steven Blaire and the Roman Catholic Bishop of Stockton, a corporation sole.

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

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

Further Jury Trial is continued to March 18, 2005 at 10:00 A.M. in Department 41.

Court adjourns.

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

Vladimir F. Kozina, Esq., SB No. 95422
2453 Grand Canal Blvd., Second Floor
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cy
Filed MAR 17 2005
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By Charles May
DEPUTY

Neumiller & Beardslee

Paul N. Balestracci, Esq. SB No. 83987
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Telephone: (209) 948-8200 Facsimile: (209) 948-4910

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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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

No. CV 018440

Plaintiff,

**FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
BISHOP STEVEN BLAIRE, AND
ROMAN CATHOLIC BISHOP OF STOCKTON, A
CORPORATION SOLE'S MOTION
FOR NONSUIT AS TO PUNITIVE DAMAGES**

vs.

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

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

Defendants.

COME NOW defendants FR. JOSEPH ILLO, MNSGR. RICHARD J. RYAN, BISHOP STEVEN BLAIRE,
AND ROMAN CATHOLIC BISHOP OF STOCKTON, A CORPORATION SOLE (INCORRECTLY NAMED HEREIN AS
THE DIOCESE OF STOCKTON) (HEREINAFTER "DEFENDANTS") and move the court for nonsuit as to
Plaintiffs' claim for punitive damages contained within the First, Second, Third, Fourth, Fifth, and
Eighth Causes of Action of the Complaint herein. This motion is made on the basis that plaintiffs have
failed establish by clear and convincing evidence that DEFENDANTS acted with oppression, fraud or
malice.

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SUMMARY OF ARGUMENT

The court is asked to take judicial notice of Plaintiffs' First Amended Complaint and specifically the First, Second, Third, Fourth, Fifth, and Eighth Causes of Action contained therein. In order to recover punitive damages, Plaintiffs must prove by clear and convincing evidence that DEFENDANTS are guilty of oppression, fraud, or malice. Plaintiffs have failed to meet this burden and therefore a judgment of nonsuit as to their claims for punitive damages should be granted.

LAW

A. THE COURT HAS AUTHORITY TO GRANT A JUDGMENT OF NONSUIT AS TO A CLAIM FOR PUNITIVE DAMAGES FOLLOWING PLAINTIFFS' PRESENTATION OF EVIDENCE

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

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

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

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

In California, a plaintiff can recover punitive damages by proving by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice. Basich v. Allstate Ins. Co. (2001) 87 Cal.App.4th 1112. The rules governing the granting of a nonsuit do not relieve a plaintiff of a burden of establishing the elements of his case and therefore, a plaintiff must produce evidence which supports logical inference in his favor in which does more than merely permit speculation or conjecture. If a plaintiff produces no substantial

1 evidence of liability or proximate cause, then granting of a nonsuit is proper. Westside Center
2 Associates v. Safeway Stores 23, Inc. (1996) 42 Cal.App.4th 507. In specifically addressing a
3 claim for punitive damages, the court has held that a motion for nonsuit on a punitive damages
4 claim is properly granted if it appears from the evidence, viewed in light most favorable to
5 plaintiff, that there is no substantial evidence supporting the claim. Stewart v. Truck Ins.
6 Exchange (1993) 17 Cal.App.4th 468.

8 **B. PLAINTIFFS HAVE FAILED TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE**
9 **THAT DEFENDANTS ARE GUILTY OF OPPRESSION, FRAUD, OR MALICE**

10 Code of Civil Procedure Section 3294 provides that punitive damages are only available
11 if it is proven by “clear and convincing evidence” that a defendant is guilty of oppression,
12 fraud, or malice. Clear and convincing evidence means proof by more than a preponderance of
13 the evidence. People v. Reynolds (1976) 55 Cal.App.3d 357, 367. In addition, proof by clear
14 and convincing evidence has been defined in other contexts as “clear, explicit, and
15 unequivocal” proof, “so clear as to leave no substantial doubt”, and “sufficiently strong to
16 demand the unhesitating assent of every reasonable mind”. People v. Martin (1970) 2 Cal.3d
17 822, 833. n.14.

19 Plaintiffs have failed to meet this stringent burden as to the First, Second, Third, Fourth,
20 Fifth, and Eighth Causes of Action contained within their First Amended Complaint.

22 **1. First Cause Of Action: Civil Battery**

23 In order to prevail on her cause of action for civil battery, plaintiffs are required to establish that
24 FR. FRANCIS JOSEPH caused them to suffer harmful or offensive contact, intentionally done, without
25 their consent. Through her own testimony and the testimony of additional witnesses called during
26 Plaintiffs’ case in chief, AMBER LOMAS admitted that at no time did FR. FRANCIS JOSEPH cause her to
27

1 suffer harmful or offensive contact. As such, AMBER LOMAS has produced no evidence to support a
2 finding that she suffered harmful or offensive contact by FR. FRANCIS JOSEPH or to support an award of
3 punitive damages thereon. In addition, RACHEL LOMAS has failed to establish by clear and convincing
4 evidence, as required for punitive damages, that FR. FRANCIS JOSEPH caused her to suffer harmful or
5 offensive contact. The only evidence presented on this issue is testimony from RACHEL LOMAS. The
6 nature and content of her testimony does not represent "clear, explicit, and unequivocal" proof, "so
7 clear as to leave no substantial doubt", and "sufficiently strong to demand the unhesitating assent of
8 every reasonable mind" that FR. FRANCIS JOSEPH is guilty of oppression, fraud, or malice as to sustain a
9 finding of punitive damages.
10

11 **2. Second Cause Of Action: Sexual Battery**

12 In order to prevail on her cause of action for sexual battery, plaintiffs are required to establish
13 that FR. FRANCIS JOSEPH caused them to suffer harmful or offensive contact, with an intimate part of
14 their body, intentionally done. ^{citation?} As described above, through her own testimony and the testimony of
15 additional witnesses called during Plaintiffs' case in chief, AMBER LOMAS admitted that at no time did
16 FR. FRANCIS JOSEPH cause her to suffer harmful or offensive contact of any sort, specifically with an
17 intimate part of her body. Therefore, no award of punitive damages can be sustained on such cause of
18 action. In addition, RACHEL LOMAS has failed to establish by clear and convincing evidence, as
19 required for punitive damages, that FR. FRANCIS JOSEPH is guilty of oppression, fraud, or malice and
20 that such conduct caused her to suffer harmful or offensive contact of any sort, specifically with an
21 intimate part of her body. The only evidence presented on this issue is testimony from RACHEL LOMAS.
22 The nature and content of her testimony does not represent "clear, explicit, and unequivocal" proof, "so
23 clear as to leave no substantial doubt", and "sufficiently strong to demand the unhesitating assent of
24 every reasonable mind" that FR. FRANCIS JOSEPH is guilty of oppression, fraud, or malice as to sustain a
25 finding of punitive damages.
26
27

1 every reasonable mind" that FR. FRANCIS JOSEPH is guilty of oppression, fraud, or malice as to sustain a
2 finding of punitive damages.

3 **3. Third Cause Of Action: Negligence Per Se**

4 The issues relating to FR. FRANCIS JOSEPH'S alleged violation of California Penal Code Sections
5 261.5 and 288a(b)(1) have already been addressed by the court's prior judgment of nonsuit. Plaintiffs
6 claim for punitive damages based on their negligence per se cause of action requires a finding that FR.
7 FRANCIS JOSEPH caused AMBER LOMAS and RACHEL LOMAS to be the subjects of unlawful violence,
8 California Penal Code Section 242, and that such unlawful violence was done with for the specific
9 purpose of sexual arousal, sexual gratification, or sexual abuse, California Penal Code Section 243.

10 As described above, through her own testimony and the testimony of additional witnesses
11 called during Plaintiffs' case in chief, AMBER LOMAS admitted that at no time did FR. FRANCIS JOSEPH
12 cause her to suffer harmful or offensive contact of any sort, specifically with an intimate part of her
13 body. Therefore, no award of punitive damages can be sustained on a negligence per se theory based
14 on the above statutes. In addition, RACHEL LOMAS has failed to establish by clear and convincing
15 evidence, as required for punitive damages, that FR. FRANCIS JOSEPH is guilty of oppression, fraud, or
16 malice and caused her to be the subject of unlawful violence of any sort, including that done for the
17 specific purpose of sexual arousal, sexual gratification, or sexual abuse. The only evidence presented
18 on this issue is testimony from RACHEL LOMAS. The nature and content of her testimony does not
19 represent "clear, explicit, and unequivocal" proof, "so clear as to leave no substantial doubt", and
20 "sufficiently strong to demand the unhesitating assent of every reasonable mind" that FR. FRANCIS
21 JOSEPH is guilty of oppression, fraud, or malice as to sustain a finding of punitive damages.
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26 //

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Mayall, Hurley,
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4. **Fourth Cause Of Action: Intentional Infliction Of Emotional Distress**

Plaintiffs AMBER LOMAS and RACHEL LOMAS' claim for punitive damages in their Fourth Cause of Action is based on alleged intentional infliction of emotional distress. In order to prevail on a cause of action for intentional infliction of emotional distress, Plaintiffs must establish that DEFENDANTS' conduct on a given occasion was extreme and outrageous, that such conduct was done with the intent to cause Plaintiff extreme mental distress, and that Plaintiff actually did suffer extreme mental distress.

Plaintiffs' claim is based on two distinct alleged incidents. The first claim is by both AMBER LOMAS and RACHEL LOMAS and is based on the alleged sexual battery by FR. FRANCIS JOSEPH. As explained above, Plaintiffs have not produced sufficient evidence that FR. FRANCIS JOSEPH committed a sexual battery on AMBER LOMAS or RACHEL LOMAS, let alone clear and convincing evidence that such conduct resulted in oppression, fraud, or malice to sustain an award of punitive damages.

Plaintiff AMBER LOMAS also alleges the conduct of DEFENDANTS on September 11, 2001 as a basis for their claim for intentional infliction of emotional distress. AMBER LOMAS has failed to present sufficient evidence to support a finding that DEFENDANTS' conduct on September 11, 2001 was extreme and outrageous and done with the specific intent to cause extreme mental distress. Furthermore, she has failed to establish that she in fact did suffer extreme mental distress as a result of DEFENDANTS' conduct. Plaintiff has failed to establish by clear and convincing evidence that any actions or conduct of DEFENDANTS on September 11, 2001 constitutes oppression, fraud, or malice as required to sustain and award of punitive damages.

5. **Fifth Cause Of Action: Intentional Infliction Of Emotional Distress**

Plaintiff KATHLEEN MACHADO claims in her Fifth Cause of Action that DEFENDANTS engaged in a campaign of harassment that included libelous and slanderous statements to other individuals and that said campaign was done with the intent to cause her to suffer extreme mental

Oppression,
fraud,
malice?

1 distress. Although a novel theory, Plaintiff has failed to produce sufficient evidence to support this
2 cause of action or an award of punitive damages thereon. Plaintiff has not produced clear and
3 convincing evidence to support a finding that DEFENDANTS are guilty of oppression, fraud, or malice
4 to sustain an award of punitive damages on her Fifth Cause of Action.

5
6 **6. Eighth Cause Of Action: Civil Conspiracy**

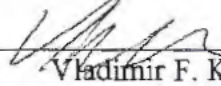
7 Plaintiffs' Eighth Cause of Action is alleges that DEFENDANTS engaged in a civil conspiracy
8 to commit the torts alleged in the other causes of action contained within their First Amended
9 Complaint. In order to succeed on this cause of action, Plaintiffs must establish that DEFENDANTS
10 concurred in a tortous scheme with the knowledge of its unlawful purpose. In addition, to recover
11 punitive damages based on this alleged conspiracy, Plaintiffs must prove by clear and convincing
12 evidence that the conduct of DEFENDANTS constitutes oppression, fraud, or malice. Plaintiffs have
13 failed to meet this burden. No evidence has been presented, let alone clear and convincing evidence,
14 that DEFENDANTS' are guilty of oppression, fraud, or malice as a result of engaging in any sort of
15 tortous scheme with the knowledge that such scheme had an unlawful purpose.
16
17

18 **CONCLUSION**

19 Plaintiffs have failed to establish by clear and convincing evidence that DEFENDANTS
20 engaged in any conduct that constitutes oppression, fraud or malice and therefore have failed to meet
21 their burden of proof to recover punitive damages. Therefore, pursuant to Code of Civil Procedure
22 Section 581c a judgment of nonsuit should be granted as to any claim for punitive damages contained
23 within Plaintiffs' First Amended Complaint.

24 Dated: 3-17-05

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

25 By 
Vladimir F. Kozina

26 Attorneys for FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
27 BISHOP STEVEN BLAIRE, AND ROMAN CATHOLIC BISHOP
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Roman Catholic Bishop of Stockton, a corporation sole, St. Joseph's Church

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Filed MAR 17 2005
ROSA JURNEPRED, CLERK
By Charlene Gray
DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN

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

No. CV 018440

Plaintiff,

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

vs.

**FOR NONSUIT ^{RE}
EMPLOYMENT Relationship**

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

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

Defendants.

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

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FACTS/SUMMARY OF ARGUMENT

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

The allegations contained in the first three causes of action of Plaintiffs' complaint and Plaintiffs' case in chief are based entirely on vicarious liability in the employment of a cleric and ratification. Plaintiffs have failed to produce any evidence that DEFENDANTS ratified the conduct Fr. Arakal Joseph and as explained below, a vicarious liability theory is not supported by law in the context of this case. Therefore, A judgment of non suit is appropriate with regard to these causes of action as to the moving defendants.

ARGUMENT

A. THE COURT HAS AUTHORITY TO GRANT A JUDGMENT OF NONSUIT FOLLOWING PLAINTIFFS' PRESENTATION OF EVIDENCE

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

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

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

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

1 Following the presentation of a plaintiff's opening statement or case in chief, Code of
2 Civil Procedure § 581c allows a defendant to make, and the court to grant, a motion for
3 judgment of nonsuit. In the present case, plaintiffs have completed their presentation of
4 evidence and have failed to establish fact necessary to support the first three causes of action
5 contained within their complaint. Therefore, defendants make this motion for judgment of
6 nonsuit under Code of Civil Procedure § 581c.
7

8 **B. AN EMPLOYER/PRINCIPLE IS NOT LIABLE FOR THE SEXUAL MISCONDUCT OF ITS**
9 **EMPLOYEES/AGENTS**

10 **1. Sexual Misconduct Is Not Within The Scope Of Employment Or Other Agency**
11 **Relationship**

12 Although the scope of employment is interpreted very broadly, California courts have
13 nonetheless uniformly refused to hold a principal vicariously liable for the sexual misconduct of its
14 agents under the doctrine of Respondeat Superior, with the sole exception of the exercise of coercive
15 police power against a victim, because such actions are not within the scope of employment. Farmers
16 Ins. Group v. County of Santa Clara (1995) 11 Cal.4th 992, 1006-1007. In Farmers Ins. Group, the
17 Supreme Court surveyed California cases involving sexual torts and found that in all of those cases:
18

19 “[V]icarious liability was rejected as a matter of law because it could not be
20 demonstrated that the various acts of sexual misconduct arose from the conduct of the
21 respective enterprises. In particular, the acts had been undertaken solely for the
22 employees' personal gratification and had no purpose connected to the employment.
23 Moreover, the acts had not been engendered by events or conditions relating to any
24 employment duties or tasks; nor had they been necessary to the employees' comfort,
25 convenience, health, or welfare while at work.” Farmers Ins. Group, at 1007.

26 The Supreme Court recently confirmed this rule.

27 “. . . the Supreme Court has also observed, in a survey of California Cases, that with the
28 exception of cases involving sexual misconduct by on-duty police officers against
members of the public, employers have not been held vicariously liable for the sexual

wrongdoing of their employees. (Farmers Insurance Group at 1006-1007.) John Y. v. Chaparral Treatment Center, Inc. (2002) 101 Cal.App.4th 565,575.)

A litany of California cases have reviewed the very same issue and come to the same conclusion. In Lisa M. v. Henry Mayo Newhall Memorial Hospital (1995) 12 Cal.4th 291, the Supreme Court overturned an appellate court's reversal of a summary judgment in favor of the hospital which had been sued under the doctrine of Respondeat Superior for the molestation of a pregnant patient by an ultrasound technician. The court held the following:

"While the employee thus need not have intended to further the employer's interest, the employer will not be liable for an assault or other intentional tort that did not have a causal nexus to the employee's work." Lisa M., at 297.

Furthermore,

[H]is [the ultrasound technician] motivating emotions were not causally attributable to his employment. The flaw in Plaintiff's case for Hospital's Respondeat Superior liability is not so much that Tripoli's actions were personally motivated, but that those personal motivations were not generated by or an outgrowth of workplace responsibilities, conditions or events. Lisa M., at 301-302.

In Alma W. v. Oakland Unified School District (1981) 123 Cal. App. 3d 133, the Court affirmed the dismissal of a complaint against a school district where the Plaintiffs sought to impose liability for the molestation of an eleven-year old student by a custodian on school grounds during school hours. The Court reasoned that "the act of rape is not attributable to the school district because it is neither a required or incidental duty of a school employee, nor is it a reasonably foreseeable consequence of the educational enterprise." Alma W. at 144.

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

1 Cal.3d 202, 218. The issue was again addressed in Juarez v. Boy Scouts of America (2000) 81
2 Cal.App.4th 377, wherein the court held “under the doctrine of Respondeat Superior, sexual misconduct
3 falls outside the course and scope of employment and should not be imputed to the employer.” Juarez
4 at 394.

5 Circumstances similar to the above cited cases surround Fr. Arakal Joseph’s alleged sexual
6 assault of AMBER LOMAS and RACHEL LOMAS. No one can reasonably contend that Fr. Arakal
7 Joseph’s alleged inappropriate touching of AMBER LOMAS and RACHEL LOMAS is an outgrowth
8 of his position as a priest with the ROMAN CATHOLIC BISHOP OF STOCKTON and a foreseeable
9 consequence of this position.
10

11 **C. APPLICATION OF A “FORESEEABILITY” STANDARD TO SUPPORT EMPLOYER/PRINCIPLE**
12 **LIABILITY FOR THE INTENTIONAL TORTS OF EMPLOYEES/AGENTS IS SPECIOUS AND**
13 **WITHOUT AUTHORITY**

14 Plaintiffs also allege that their injuries were foreseeable under the circumstances, thereby
15 attempting to use a negligence standard to support causes of action for intentional torts against
16 DEFENDANTS. The contention that foreseeability imposes vicarious liability fails in the wake of
17 overwhelming authority.
18

19 In negligence, foreseeability refers to the likelihood that an event will occur given all the
20 circumstances. Foreseeability has a much different meaning in the context of Respondeat Superior
21 than in the context of negligence:

22 “[F]oreseeability as a test for Respondeat Superior merely means that in the context of
23 the particular enterprise an employee’s conduct is not so unusual or startling that it
24 would seem unfair to include the loss resulting from it among other costs of the
25 employer’s business [citations omitted].
26
27

1 In other words, where the question is one of vicarious liability, the inquiry should be
2 whether the risk was one that may fairly be regarded as typical of or broadly incidental
3 to the enterprise undertaken by the employer [citations omitted].” Rodgers v. Kemper
4 Constr. Co. (1975) 50 Cal.App.3d 608 at 618-619.

5 Foreseeability does not turn on statistical likelihood or opportunity; rather, it relates to an
6 inherent quality of the employment that predictably prompts or provokes the tortious act. Lisa M. at
7 302. Vicarious liability is not appropriate in the context of a sexual assault, because “a deliberate
8 sexual assault is fairly attributed not to any peculiar aspect of the [employment], but only to
9 ‘propinquity and lust’ [citation omitted].” Lisa M. at 302. Thus, in John Y., where the Plaintiff argued
10 that sexual assaults by a counselor on a resident is foreseeable on the basis of statistical evidence that
11 molestations had occurred at such facilities before and were more likely in such settings, the Court
12 nevertheless refused to imposed vicarious liability, because “In the view of decent society, it most
13 certainly remains both unusual and startling for a residential counselor/teacher’s aide to sodomize an
14 emotionally disturbed child whom he supervises.” John Y. at 577.

15 In addition, although it acknowledged that the likelihood of abuse or molestation might impose
16 a duty of care on defendant Boy Scouts of America to take reasonable protective measures to protect
17 scouts, the Supreme Court refused to impose vicarious liability on the Boy Scouts of American on that
18 basis:

19 “we reject the proposition that simply because the scoutmaster/scouting relationship
20 provided the opportunity for Paz’s wrongful acts, Paz’s intentional criminal actions
21 should be imputed to the Scouts and the Church.” Juarez at 395.

1 Certainly an alleged inappropriate contact with plaintiffs by Fr. Arakal Joseph cannot be
2 considered a "usual" part of his position as a priest within the ROMAN CATHOLIC BISHOP OF STOCKTON.

3
4 CONCLUSION

5 Plaintiffs have complete their case in chief and have failed to present any evidence that
6 DEFENDANTS ratified the conduct Fr. Arakal Joseph. Furthermore, as explained above, the concept
7 of respondeat superior cannot be the basis for vicarious liability in this context. As such,
8 DEFENDANTS' motion should be granted and a judgment of non suit should be entered as to the first
9 three causes of action contained within Plaintiffs' complaint.

10 Dated: 3-17-09

MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

11 By _____

Vladimir F. Kozina

12 Attorneys for FR. JOSEPH ILLO, MSGR. RICHARD J. RYAN,
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14 OF STOCKTON, A CORPORATION SOLE

