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

9 **KATHLEEN MACHADO, ET AL**

) **No. CV018440**

10)
11) Plaintiffs,

) **DEFENDANTS FR. JOSEPH ILLO,**
) **BISHOP STEPHEN BLAIRE, MONSIGNOR**
) **RICHARD RYAN AND ROMAN CATHOLIC BISHOP**
) **OF STOCKTON, A CORPORATION SOLE'S**
) **SETTLEMENT CONFERENCE STATEMENT**

12)
13) vs.

14)
15) **FR. JOSEPH ILLO, ET AL,**

) **DATE: FEBRUARY 7, 2005**

) **TIME: 2:00 P.M.**

) **DEPT: 41**

16) Defendants.
17

18 **PARTIES AND REPRESENTATIVES**

19 Plaintiffs are represented by George MacKoul, Esq. of Patterson, California and Boston,
20 Massachusetts, and Anthony Boskovich, Esq. of San Jose, California. Defendants Bishop Stephen E.
21 Blaire, Monsignor Richard Ryan, Father Joseph Illo and the Roman Catholic Bishop of Stockton, a
22 corporation sole, are represented by trial counsel Vladimir F. Kozina, Esq. and Mayall, Hurley,
23 Knutsen, Smith & Green of Stockton, California in association with Paul N. Balestracci of Neumiller
24 and Beardslee of Stockton, California. Defendant Father Francis Joseph Arakal is represented by
25 Michael Coughlan, Esq. of Stockton, California.

26 **FACTS**

27 The present litigation involves allegations of sexual abuse and battery made by Rachel and
28 Amber Lomas, minor children of plaintiff Kathleen Machado, as against Father Joseph Arakal.

1 In addition, the litigation involves allegations that Bishop Stephen Blaire, Monsignor Richard
2 Ryan, Father Joseph Illo, Father Francis Arakal and Roman Catholic Bishop of Stockton, a corporation
3 sole were involved in a civil conspiracy and acted to defame plaintiffs.

4 To understand the present litigation, the court needs to be made aware of some background
5 concerning the history of plaintiff Machado and the key role it plays in the allegations made in this
6 litigation.

7 Plaintiff Machado was married to a man that would regularly beat her. This would occur with
8 such frequency and severity that her now ex-husband was incarcerated for domestic violence on a
9 number of occasions. His violence was also aimed at his daughters, including the plaintiffs Lomas
10 herein, according to the testimony of plaintiff Machado. Through all this, her three daughters,
11 including plaintiffs Rachel Lomas and Amber Lomas, would witness and try to protect her.

12 At this time, plaintiffs were attending St. Anthony's Church in Hughson, around the corner
13 from the home they still live in, at no more than one-quarter mile away.

14 Fr. Illo, who, at the time, was assigned to St. Anthony's Parish in Hughson, actually first met
15 plaintiff Machado when he was summoned from the parish rectory by a staff member that informed
16 him that there was a police action occurring on or at the church property. He observed that members of
17 the Hughson Police Department (in actuality members of the Stanislaus County Sheriff's Office
18 contracted to provide police services to the City of Hughson) were apparently acting to arrest plaintiff
19 Machado's husband. At this scene, plaintiff Machado was apparently trying to prevent the arrest by
20 pleas that appeared to indicate she did not want her now ex-husband arrested. This apparently
21 circulated around a domestic violence issue. Fr. Illo attempted to comfort plaintiff Machado, who was
22 quite distraught.

23 Plaintiff Machado, following the above incident, attended counseling, which Fr. Illo, in the
24 course of his pastoral duties, provided. A friendship developed between the two and Mrs. Machado's
25 children, including the two of whom are plaintiff's in this case.

26 It should be noted at this point that there are and have never been any allegations concerning
27 Fr. Illo and any alleged improprieties concerning these or any other children.

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1 Plaintiff, Kathleen Machado, had obviously deep feelings for Fr. Illo, communicating to him in
2 one letter that she was “deeply in love” with him, could “feel” his “breath” and other such comments.
3 She even persuaded her children to write letters, including comments intimating the children wanted
4 Fr. Illo to be their father. In fact, she apparently wanted Fr. Illo to be her lover, something Fr. Illo
5 could not and would not be. Fr. Illo made this very clear to plaintiff Kathleen Illo, something that
6 angered her.

7 Despite this, Kathleen Machado would not give up. After Fr. Illo was transferred to St.
8 Joseph’s in Modesto to take the place of Fr. O’Hare, who had died, plaintiff Machado stopped
9 attending St. Anthony’s and began to attend daily and Sunday Mass at St. Joseph’s in Modesto. Again,
10 this was only after Fr. Illo was assigned there. It should be noted that, unlike the location of St.
11 Anthony’s that is literally around the corner and down the block from plaintiff’s house, the drive to St.
12 Joseph’s takes approximately 15-17 minutes in a light traffic day.

13 Plaintiff Kathleen Machado would attend daily Mass, sitting in the front pew with her three
14 children, whom she always took with her. She continued to write what can only be called love notes to
15 Father Illo. She had feelings, that Fr. Illo could not and would not return. During this entire time, the
16 children also wrote notes, including one from Rachel that stated “I love you as much as my mother”.

17 It got to the point that Fr. Illo had to dispel any notions Mrs. Machado had, and to terminate the
18 distraction she had become to his ministry, which included caring for the spiritual, emotional and
19 physical needs of 4,500 families in the parish. This occurred prior to the time that Father Arakal came
20 to Saint Joseph’s

21 It is at this point that Fr. Arakal enters the picture. When Fr. Illo made it abundantly clear that
22 nothing was to come of the relationship with Mrs. Machado, she invited Fr. Arakal over for dinner on
23 2 occasions and a third time for a house blessing.

24 Father Arakal's relationship with the plaintiffs dates to the late spring of 2001, within a few
25 months after moving to Modesto from a parish in Lemoore, when he accepted a dinner invitation to the
26 home of plaintiff Machado, who routinely attended daily Mass with her daughters. Plaintiffs have
27 testified that Arakal allegedly badgered them into the dinner. invitation which the family reluctantly
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1 agreed to. Both Rachel and Amber Lomas have testified that with the exception of their much younger
2 sister, no member of the family ever even remotely liked Father Arakal, who; they claim had always
3 made them "uncomfortable". In short plaintiffs agreed that there was never any semblance of a close
4 trusting relationship between themselves and Father Arakal.

5 It was on the last of these visits, for a house blessing, that the allegations of improper conduct
6 arose.

7 The plaintiff's allege that Fr. Arakal pulled up his shirt. Exposing his belly and patting it after
8 one dinner. Plaintiff's also claim that Fr. Arakal put his collar in his front pocket and told the youngest
9 child to take it out. Of interest, plaintiff Rachel Lomas claims this happened at the house, while
10 plaintiff Amber Lomas has stated it occurred in the very public area of the front of St. Joseph's
11 Church, with many people around. The only consistent statements of these two plaintiffs is that the
12 youngest girl never did pull out the collar, being prevented from doing so by the mother. Father
13 Arakal denies the collar incident occurred at all.

14 Further background is necessary at this point. The scene of the alleged abuse and battery,
15 Machado house can best be described as small. The kitchen has an opening below the cabinets where
16 one can view the living room area in an unobstructed fashion. The living room and the couch that is
17 relevant to this proceeding are located, is not more than 2½ to 3 feet away from the counter. There are
18 no barriers that would prevent a person in the kitchen from hearing, and seeing everything that goes on
19 in the living room.

20 After the 3rd dinner, in July, 2001, the plaintiff children went into the living room with Fr.
21 Arakal. Colleen Lomas, admits that, as the four sat there, she began to tickle Fr. Arakal and her sister
22 Amber Lomas. She and her sister also tickled plaintiff Rachel Lomas, who tickled all back, including
23 Fr. Arakal. Fr. Arakal also tickled back and soon all four were engaged in a tickling contest.

24 At this point the story not only converges, but there are exaggerations and additions made by
25 the plaintiffs as they related an ever more engrossing tale to successive individuals over a course of
26 time and circumstances.

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1 Plaintiff Amber Lomas claims that Father Arakal tickled her on the upper legs and abdomen. In
2 an interview undertaken by the Stanislaus County District Attorneys office as part of the Hughson
3 Police Departments investigation (an investigation that was initiated, it should be added, by the
4 defendants themselves as soon as a claim of inappropriate conduct was made to defendants) Amber
5 expressly denied any touching of breast or vaginal areas. She has also testified accordingly. Despite
6 this, and with full knowledge of the falsity of such claims, the plaintiff's and their counsel have alleged
7 and put into the public domain, claims that plaintiff Amber Lomas was molested by sexually motivated
8 touching of her breasts and vaginal areas by Father Arakal. Discovery and law enforcement
9 investigation have made it an undisputed fact that the occurrence with Amber Lomas never happened.

10 Plaintiff Rachel Lomas also claims inappropriate conduct on the part of Father Arakal in the
11 same incident. Although plaintiff Amber Lomas claims that Father Arakal had pinned plaintiff Rachel
12 Lomas to the floor by holding both of her hands down out to her side with both of his hands and, in
13 what can only be described as a feat extraordinaire, was, while having both of his hands on her hands,
14 able to brush against her breasts with his.

15 Plaintiff Rachel Lomas also claims that Father Arakal had pinned her to the floor, telling the
16 Stanislaus County District Attorney sexual abuse investigator that she had blacked out a large part of
17 the incident and could not remember details, then going into vivid detail in the interview, that Father
18 Arakal took his right hand off of her right hand and proceed to first brush his hand against her breast
19 and then also touch a breast with a cupped hand.

20 It should be noted that this conduct was in the living room in full view of Kathleen Machado,
21 who was in the kitchen, 2 – 3 feet away.

22 The plaintiff's have differing versions of what transpired next. One is that Rachel Lomas
23 commanded Father Arakal to get off of her, another that she just left without saying anything. Father
24 Arakal is claimed to have said, or strongly commented, or yelled, depending on the version, "I didn't
25 do anything wrong." Allegedly plaintiff Kathleen Machado, after this incident ordered Father Arakal
26 out of the house.

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1 According to the testimony of Rachel Lomas and Amber Lomas, as well as Kathleen Machado,
2 nothing was said to Kathleen Machado or anyone about the alleged incident. Neither did Kathleen
3 Machado do anything, as one might expect a mother to do if she suspected inappropriate conduct by
4 someone against her own daughter in the very living room of her home. There was not call to the
5 police, nor report to a child abuse agency, no call to Fr. Illo or to anyone at the Diocese of Stockton.

6 It was not until almost three months later that some claim was made concerning Father Arakal.
7 And it was not a claim of inappropriate conduct. In fact, the incident, occurring September 11, 2001
8 wherein a statement was made that Father Arakal made Amber Lomas feel “uncomfortable” can only
9 be described as bizarre.

10 Amber allegedly asks her mother to speak to Fr. Illo after a weekday mass. Despite the
11 tempestuous relationship between her family and Illo, Ms. Machado had no hesitation in leaving her
12 11 year old daughter in the company of Illo and then departing for work, Ms. Machado alleges that she
13 had no clue that Amber had allegedly intended to unburden herself to Illo of the secret of the alleged
14 molestation by Arakal. Discovery has revealed that while Amber may have informed Father Illo about
15 her feelings that Arakal made her feel uncomfortable, the majority of her concerns revolved around her
16 anger toward Illo, pictures of whom she had brought to the meeting, There was absolutely no report of
17 any molestation made to Illo who was told only about the shirt lifting episode and the alleged collar
18 event.

19 Illo upon hearing the claim about his associate, made the decision to summon Arakal, who
20 already bearing rumors being spread about him by Ms. Machado, understandably became defensive.
21 Amber, now in the presence of two upset adults likewise became upset to the point where parish staff
22 members summoned not only her mother, but also a counselor. This counselor expressly informed
23 Father Illo that she was a designated reporter and if she had any information of a possible abuse or
24 molestation she would have to report it.

25 The counselor, Yvone McLoughlin, conducted an interview of Amber Lomas, in the presence
26 of the girl's mother, aunt and a friend. Based on the interview and her education, training and
27 experience, Ms. McLoughlin ascertained that no abuse had occurred.

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1 Since this professional made a determination contrary to what plaintiff's are trying to claim in
2 this litigation, plaintiffs now try to assert that the counselor, Yvonne McLoughlin, is also part of
3 parish/diocesan, conspiracy to cover up Arakal's acts.

4 In reality, no claim of inappropriate touching, abuse or molestation was made. It was not until
5 approximately spring of 2002, apparently after Machado had consulted her attorneys, that the
6 grandfather of the minor plaintiffs approached Monsignor Ryan after a Confirmation in Ceres and said
7 something inappropriate had occurred. This was on a Friday night and Monsignor Ryan met with the
8 family as early as a meeting could be arranged, the following Monday.

9 The Diocese of Stockton, due to the allegations of inappropriate touching, made for the first
10 time in 2002, immediately contacted the Hughson Police Department. The Hughson Police Department
11 and the Stanislaus County. Pursuant to Diocesan policy, Father Arakal was suspended pending the
12 results of the investigations. None of the investigations determined that there was a credible allegation
13 nor did the investigations reveal any basis for requiring a report of potential abuse to the Department
14 of Justice. Father Arakal, after being completely cleared, was reinstated.

15 Despite independent investigation and findings clearly indicating that the allegations were
16 meritless, the plaintiffs alleged that the events occurred, alleged a conspiracy to cover up the
17 allegations, claiming that a report of abuse was made on September 11, 2001 and that even neutral
18 professionals that clearly indicated they would report any suspected child abuse, were involved in a
19 grand scheme to cover up the allegations and to defame the plaintiffs.

20 The facts are otherwise.

21 ISSUES

22 The issues involve the allegations of abuse and battery, alleged conspiracy not to report
23 allegations of child abuse and defamation of plaintiffs and damages consequent thereto. The
24 defendants deny and vigorously contest the allegations and claims as without merit.

25 Motions

26 A motion for a gag order will be made at the settlement conference, as will be more fully
27 discussed below. Other than such request, no motions, save and except motions in limine are
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1 anticipated at this time. There is a motion for protective order, filed by plaintiffs, is pending regarding
2 witness Johnny Smith, a plaintiff's investigator designated in discovery responses as a person with
3 knowledge of the facts that, to this party's information and belief, has told at least one witness, a police
4 officer in Lemoore, that this case involved a rape, something entirely false and intended to prejudice
5 the potential witness.

6 **SETTLEMENT DISCUSSIONS/COMMENTS**

7 Mediation has been attempted. However, the plaintiff's by virtue of their conduct in, at
8 minimum failing to correct the facts with a reporter for the Record, allowing a factually inaccurate
9 report to be broadcast not only in the newspaper but on the internet (due to the Record's publication on
10 the Internet) where it will remain worldwide for years to come due to the technology, and in apparently
11 violating the terms of a confidentiality agreement concerning an earlier case that was totally irrelevant
12 and differed from the present matter completely, have seriously jeopardized negotiations, almost
13 ensuring the matter will have to be tried.

14 Although plaintiff's deny any hand in it, based on statements of the reporter to this party's
15 counsel, it is clear that information on this four year old case, was for the first time given to the press
16 to be published less than one month prior to trial. The source of the information can be reasonably
17 inferred.

18 It is this party's contention that this conduct was expressly designed to poison the potential jury
19 pool and to attempt, in the current public hysteria of alleged clerical abuse cases, to intimidate the
20 defendants.

21 This conduct has raised further issues and potential future litigation as against all entities and
22 persons who, without privilege have libeled Father Arakal, Father Illo and the other defendants in this
23 matter, seriously harming their reputations and ability to carry out their priestly ministry with
24 knowingly innacurate accusations designed to expose them to scorn and ridicule and question their
25 character.

1 **TRIAL/MISCELLANEOUS ISSUES**

2 Trial of this matter is anticipated to take 12-15 court days. A jury questionnaire will be
3 proposed and individual voir dire will be requested.

4 In addition, due to the matters discussed above, a gag order is requested to preclude any party,
5 witness or counsel in this matter from communicating, disseminating or commenting upon any aspect
6 of this litigation, except in actual court proceedings, or with prior approval of the court, until the
7 conclusion of this matter.

8 Dated: MAYALL, HURLEY, KNUTSEN, SMITH & GREEN

9 By _____
10 Vladimir F. Kozina