

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
TWENTY-SECOND JUDICIAL  
STATE OF MISSOURI

JANE DOE 92,

Plaintiff,

vs.

ARCHDIOCESE OF ST. LOUIS, a Non-  
Profit Corporation, ARCHBISHOP  
ROBERT J. CARLSON of the Archdiocese  
of St. Louis, and FATHER JOSEPH ROSS,

Defendants.

Cause No. 1122-CC10165

Division 1

**DEFENDANT ARCHDIOCESE OF ST. LOUIS' ANSWERS AND OBJECTIONS  
TO PLAINTIFF'S FIRST INTERROGATORIES**

Defendant Archdiocese of St. Louis (the "Archdiocese"), by and through counsel, hereby submits its Answers and Objections to Plaintiff's First Interrogatories.

**GENERAL OBJECTIONS**

The Archdiocese makes the following general objections with respect to each and all of Plaintiff's Interrogatories which are incorporated by reference into each separate answer:

1. These answers are made solely for purposes of this civil action. Each response is subject to any and all objections as to competency, relevancy, materiality, propriety and admissibility, and to any and all other objections and grounds that would require the exclusion of any information contained in any answer, all of which objections and grounds are hereby expressly reserved and may be interposed later at or before the time of trial.

2. The Archdiocese has not completed its investigation of this action, has not completed discovery, and has not completed trial preparation. The answers hereinafter are based on the Archdiocese's knowledge, information and belief at this time, and are made without prejudice to the objections set forth herein. The Archdiocese specifically reserves the right to

amend and/or supplement its answers to Plaintiff's Interrogatories at any time or to introduce facts or identify documents not contained or identified herein if it should appear at any time that omissions or errors have been made or if they obtain additional or more accurate information. The Archdiocese further reserves the right to rely upon such facts and other evidence as may be derived through future discovery or through its continuing investigation in this matter or as may be adduced at trial.

3. The following answers are based upon information presently available to and located by the Archdiocese and, except for explicit facts expressly set forth herein, no incidental or implied admissions are intended hereby. The fact that the Archdiocese has answered or objected to any interrogatory or part thereof shall not be taken as an admission that the Archdiocese accepts or admits the existence of any "facts" set forth or assumed by such interrogatory, or that the Archdiocese's answer or objection constitutes admissible evidence. The fact that the Archdiocese has responded to part or all of any interrogatory is not intended to be and shall not be construed to be a waiver by the Archdiocese of all or any part of any objection to any interrogatory made herein.

4. To the extent any or all of the interrogatories seek information learned in anticipation or defense of litigation or for trial, or for information covered by the attorney work product doctrine or protected from disclosure by the attorney-client privilege, the Archdiocese objects to each and every such request, and thus will not supply or render any information protected from disclosure by any applicable privilege.

5. To the extent any or all of the interrogatories seek Defendant Ross's personal health information that is protected against unrestricted disclosure and use under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other applicable federal, state and local laws and regulations, the Archdiocese objects to each and every request, and will

not supply any responsive information except upon prior written notice to counsel for Ross that allows Ross adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court.

6. To the extent any or all of the interrogatories seek information contained in Ross's personnel file, the Archdiocese objects to each and every request on the ground that "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed." State ex. rel. Delmar Gardens North Operating, LLC v. Gaertner, 239 S.W.3d 608, 611-12 (Mo. 2007) (en banc) (citing State ex rel. Crowden v. Dandurand, 970 S.W. 2d 340, 343 (Mo. banc 1998)) (emphasis added). The Archdiocese will not supply any responsive information except upon prior written notice to counsel for Ross that allows Ross adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court.

7. To the extent any of all of the requests seek information, documents or material concerning Ross's laicization, the Archdiocese objects to and will not supply or render any such information, on the basis that it is protected from disclosure under the First Amendment of the United States Constitution.

These General Objections are hereby incorporated into each answer below.

#### **SPECIFIC ANSWERS AND OBJECTIONS TO INTERROGATORIES**

1. Identify who is answering these Interrogatories and their affiliation with Defendant Roman Catholic Archdiocese of St. Louis (hereinafter, "Archdiocese").

**ANSWER:** Subject to and without waiving the General Objections, the Answers to these interrogatories contain and reflect information provided by or gathered from numerous individuals, records, documents, or other reliable sources of information within the Archdiocese, and incorporate the legal advice and objections of defense counsel. The Answers are verified on



behalf of the Archdiocese by Rev. Msgr. Mark Rivotuso, although he may not have personal knowledge of the facts stated herein.

2. Did Defendant have in effect a liability insurance policy or policies providing coverage for any of the damages claimed by the Plaintiff in this action? If so, please provide the following:
  - a. The named insured in this policy;
  - b. The policy number;
  - c. The name, address and phone number of the company extending coverage;
  - d. The policy limits;
  - e. The effective dates of each policy of insurance;
  - f. If coverage under this policy is being denied or, if legal defense is being provided under a reservation of rights, identify all policy clauses identified by the insurance company as the basis for the denial of coverage or the reservation of rights; and
  - g. Attach a copy of each and every insurance policy identified in this interrogatory together with all declaration pages and amendatory endorsements applicable during the period of time of the alleged sexual abuse.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese is not aware of any policies of insurance that would apply to this matter. The Archdiocese objects to this interrogatory to the extent that it invades the work product privilege by calling upon the Archdiocese to draw legal conclusions. The Archdiocese also objects to this interrogatory to the extent it requests the Archdiocese to disclose information protected by the insured-insurer privilege. Furthermore, this interrogatory seeks information beyond the scope of Rule 56.01(b)(2) of the Missouri Rules of Civil Procedure and seeks information that is not reasonably calculated to lead to the discovery of admissible evidence.

3. State whether the insurance company identified in your Answer to Interrogatory No. 2 has indicated that there are policy exclusions precluding or limiting coverage for the acts which are the basis for this Complaint? If so, describe these policy exclusion(s).

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese incorporates by reference its response to Interrogatory Number 2 above. The Archdiocese objects to this interrogatory to the extent it seeks information protected by the work product and insured-insurer privileges. The Archdiocese further objects to this

interrogatory because the insurance policy or policies constitute the best evidence of their terms and therefore speak for themselves.

4. Identify any person who you contend has knowledge or claims to have knowledge of any facts relating to the alleged incidents which are the subject matter of this litigation.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, Plaintiff and Joseph Ross are the only persons known to the Archdiocese who may have first hand knowledge of the alleged incidents. The Archdiocese objects to this interrogatory because Plaintiff does not limit this interrogatory to persons who have personal, first-hand knowledge, but rather this interrogatory encompasses those persons who may have knowledge based merely on the filing of the lawsuit, legal counsel previously retained by Plaintiff, Plaintiff's counsel's website, etc. The Archdiocese further objects on the basis that this interrogatory is vague and ambiguous and not limited in time or scope in that it refers to "the incidents which are the subject matter of this litigation."

5. Have you, your agents, investigators or attorneys contacted or spoken to any of the persons named in the answers to the preceding interrogatory? If so, separately identify each such person.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, no. The Archdiocese objects to this interrogatory on the grounds that it is ambiguous and seeks information protected by the attorney-client privilege, the work product doctrine and the insured-insurer privilege.

6. As to all persons whose names are set forth in your responses to the preceding interrogatories have you, your agents, investigators or attorneys or anyone acting on your behalf, obtained statements of any kind, whether written, stenographic, recorded, reported, or otherwise, from any persons identified in the above interrogatories.

**ANSWER:** The Archdiocese objects to this interrogatory on the grounds that it is ambiguous and that it seeks information protected by the attorney-client privilege, the work product doctrine and the insured-insurer privilege.



7. If your response to interrogatory No. 6 is in the affirmative, please state separately for each such person, the following:
- a. Identify that person;
  - b. Date on which the statement was taken; and
  - c. Identify the person who took the statement.

**ANSWER:** Please see the response to Interrogatory No. 6 above.

8. Have you, your agents, investigators, or attorneys or anyone acting on your behalf, obtained any kind of written, stenographic, recorded, reported, oral, or other type of statements from the Plaintiff? If so, please state for each such statement:
- a. The date on which the statement was taken; and
  - b. Identify the person who took the statement.

**ANSWER:** Subject to and without waiving the General Objections, neither the Archdiocese nor its agents have obtained a statement directly from the Plaintiff.

9. Have you, your agents, investigators, or attorneys or anyone acting on your behalf, destroyed, relocated, or are otherwise no longer in possession of, any documents which reflect any discussions or communications relating to Defendant Joseph Ross alleged sexual contact with Plaintiff or allegations of Ross's sexual contact with any other person within the Defendant Archdiocese or destroyed, relocated, or are otherwise no longer in possession of, any document, notes, or memoranda which contains information about such sexual contact. If so, please state for each such document:
- a. Identify the document;
  - b. Identify the contents of the document;
  - c. Identify the person who drafted the document;
  - d. Identify to whom the document was addressed; and
  - e. Describe any further communications and/or correspondence regarding the document.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese has no knowledge of the destruction of any documents referred to in this interrogatory. The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous, and overly broad, and spans a period of more than 30 years. The Archdiocese further objects on the ground that Plaintiff has not limited her request to investigations concerning allegations of Ross's involvement with minors, but asks about investigations

concerning Ross's "sexual contact with any other person within the Defendant Archdiocese."

The Archdiocese further objects to this interrogatory as it is argumentative with respect to the term "destroyed."

10. Do you know of any legal action or insurance claims brought by Plaintiff prior to the institution of this lawsuit? If so, please furnish all information you possess in this regard, including dates, nature of the claims and final disposition of any claims made.

**ANSWER:** Subject to and without waiving the General Objections or the following objection, the Archdiocese is aware of Plaintiff making criminal complaints to law enforcement authorities. The Archdiocese objects to this interrogatory to the extent that it calls for information equally available to Plaintiff.

11. Has the Defendant, or its agents, attorneys or employees at any time received any medical report, oral or written, x-ray report, hospital records or writings of any kind from any medical practitioners, psychiatrists, psychologists, or hospitals regarding the medical, physical, mental or emotional condition of Plaintiff before, during or after the occurrences which are alleged as the subject matter of this litigation? If so, please provide the name and address of the person(s), clinic, hospitals or other institutions from which the information was originally received by Defendant or its representatives.

**ANSWER:** Subject to and without waiving the General Objections or the following objection, no. The Archdiocese objects to this interrogatory on the grounds that it seeks information protected by the attorney-client privilege and/or the work product doctrine.

12. Does Defendant have knowledge of any written or oral report, or any statement, memorandum, recording or other form of testimony, from the Plaintiff, signed or unsigned, concerning this cause of action? If so, please describe that information in detail. If said information is in a written or recorded form, please attach a copy of said documented information to your answers to these interrogatories.

**ANSWER:** Subject to and without waiving the General Objections or the following objection, the Archdiocese is aware of Plaintiff's deposition testimony given in the criminal case brought against Ross. The Archdiocese objects to this interrogatory to the extent that it calls for information equally available to Plaintiff.



13. Describe each and every report or statement made by you to anyone regarding the facts of the alleged incidents which are the subject matter of this litigation or any events leading up to the occurrence of said incidents or any events occurring immediately thereafter. As to each, please provide the following:
- The type of the report or statement, whether written, oral, recorded, reported or otherwise;
  - The date of said statement and by whom it was made;
  - The name, address and employer of the custodian of any permanent form of said statement;
  - If you are making a claim of privilege with regard to any of said statements or Reports, please state the basis of said privilege; and
  - Attach copies of each document identified in this interrogatory.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, once Plaintiff advised the Archdiocese of her alleged claims, the matter was referred to legal counsel. The Archdiocese objects to this interrogatory on the basis that it is vague, ambiguous, overly broad, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence as it asks the Archdiocese to describe reports or statements "made by you to anyone regarding the facts of the alleged incidents which are the subject matter of this litigation or any events leading up to the occurrence of said incidents or any events occurring immediately thereafter." Plaintiff has not limited her reference to "the incidents which are the subject matter of this litigation or any events leading up to the occurrence of said incidents or any events occurring immediately thereafter" in time or scope. The Archdiocese further objects to this interrogatory on the grounds that it seeks information protected by the attorney-client privilege, the work product doctrine and the insured-insurer privilege. In addition, it calls upon the Archdiocese to disclose the mental impressions and trial strategy of its attorneys.

14. Does Defendant have knowledge of any facts or allegations made against Defendant Joseph Ross for sexual contact or attempted sexual contact with any individual, including the Plaintiff, before, during or after the incidents which are the subject matter of this action? If so, please state separately for each claim:
- Identify all persons who informed Defendant of these allegations;



- b. The name, present address and present age of each individual involved in the sexual contact;
- c. The dates the sexual contact was purported to have occurred;
- d. The nature of the act or acts of sexual contact Defendant Ross was purported to have committed;
- e. If criminal charges or civil damage claims resulted from this sexual contact, identify the parties to this action, the court in which the action was venued, the court file number and the ultimate disposition of the action;
- f. The date Defendant became aware of these allegations, identifying the particular agent or agents of Defendant who became aware of these allegations;
- g. Identify and describe any letter, document, memorandum, report or other tangible evidence relating in any manner to Defendant's knowledge of prior sexual contact committed by Defendant Ross;
- h. Attach copies of all tangible evidence identified in your answer to interrogatory 14(g);
- i. If Defendant Ross admitted the allegations of sexual contact, provide the date of and substance of the admission and identify each and every one of Defendant's agents who became aware of the admission;
- j. Describe any disciplinary or preventative actions Defendant took in response to knowledge of this sexual contact;

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will provide relevant non-privileged information responsive to this request, if any, including personnel and/or health records of Ross, if any, only upon prior written notice to counsel for Ross which allows adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court, or, in the alternative, upon the entry of an appropriate order by the Court requiring the Archdiocese to provide responsive non-privileged documents. The Archdiocese objects to this interrogatory to the extent that it requests information contained in Ross's personnel file on the ground that it invades the privacy of Defendant Ross. Specifically, the Missouri Supreme Court has held that "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed." State ex. rel. Delmar Gardens North Operating, LLC v. Gaertner, 239 S.W.3d 608, 611-12 (Mo. 2007) (en banc) (citing State ex rel. Crowden v. Dandurand, 970 S.W. 2d 340, 343 (Mo. banc 1998)) (emphasis added). The Archdiocese further objects to the extent that this interrogatory requests Ross's personal health information that is protected against unrestricted disclosure and use under

the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other applicable federal, state and local laws and regulations. The Archdiocese also objects to this interrogatory as it requests information about the Archdiocese's knowledge of any facts or allegations made against Ross for sexual misconduct or attempted sexual misconduct with any individual "after the incidents which are the subject matter of this action," as any events that may have occurred after Plaintiff's alleged abuse or any knowledge that the Archdiocese may have received after Plaintiff's alleged abuse regarding any other alleged abuse victims is irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

15. Does Defendant have knowledge of any psychiatric, psychological or other therapy or counseling which Defendant Ross has undergone either before, during or after the alleged incidents which are the subject matter of this action. If so, provide the following:
  - a. Identify the person(s) who counseled or provided therapy for Defendant Ross;
  - b. The dates of this therapy or counseling;
  - c. Did Defendant's agent, servant or employee direct or suggest that Defendant Ross undergo this therapy or counseling. If so, please identify said agent, servant or employee of Defendant, the subject matter of the communication(s) with Ross and the date(s) of these communications;
  - d. Describe any and all documents in Defendant's possession relating in any way to this therapy or counseling;
  - e. Attach to these interrogatory answers any reports, records, memorandum or other tangible documents relating in any way to this therapy or counseling; and
  - f. The manner in which your agent or representative became aware of the counseling or therapy.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will provide relevant non-privileged information responsive to this request, if any, including personnel and/or health records of Ross, if any, only upon prior written notice to counsel for Ross which allows adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court, or, in the alternative, upon the entry of an appropriate order by the Court requiring the Archdiocese to provide responsive non-privileged documents. The Archdiocese objects to this interrogatory to the extent that it requests information contained in Ross's personnel file on the ground that it invades the privacy of



Defendant Ross. Specifically, the Missouri Supreme Court has held that “Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed.” State ex. rel. Delmar Gardens North Operating, LLC v. Gaertner, 239 S.W.3d 608, 611-12 (Mo. 2007) (en banc) (citing State ex rel. Crowden v. Dandurand, 970 S.W. 2d 340, 343 (Mo. banc 1998)) (emphasis added). The Archdiocese further objects to the extent that this interrogatory requests Ross’s personal health information that is protected against unrestricted disclosure and use under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and other applicable federal, state and local laws and regulations.

16. Describe the relationship between you and Defendant Ross including but not limited to the following:
  - a. Describe the circumstances surrounding Ross’s initial association with Defendant;
  - b. The method by which Ross was compensated for services he supplied to Defendant, including the nature, source and frequency of this compensation;
  - c. List the specific duties and responsibilities of Ross during his employment association with Defendant;
  - d. List the instrumentalities required by Ross to perform these duties and identify the person or organization which supplied these instrumentalities to Defendant Ross;
  - e. List the name(s) of Ross’s supervisor(s) during his association with the Defendant;
  - f. State the date Ross’s association with the Defendant was terminated and the reason for termination of this association;
  - g. List each assignment given to Ross and for each assignment identify the years Ross served, his title and duties, and his supervisors;
  - h. Identify all documents relating to the relationship between you and Ross.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will provide relevant non-privileged information responsive to this request, if any, including personnel and/or health records of Ross, if any, only upon prior written notice to counsel for Ross which allows adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court, or, in the alternative, upon the entry of an appropriate order by the Court requiring the Archdiocese to provide responsive non-privileged documents. The Archdiocese objects to this interrogatory to the extent that it requests information contained in Ross’s personnel file on the ground that it invades the privacy of

Defendant Ross. Specifically, the Missouri Supreme Court has held that "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed." State ex. rel. Delmar Gardens North Operating, LLC v. Gaertner, 239 S.W.3d 608, 611-12 (Mo. 2007) (en banc) (citing State ex rel. Crowden v. Dandurand, 970 S.W. 2d 340, 343 (Mo. banc 1998)) (emphasis added). The Archdiocese further objects to this interrogatory on the basis that it is vague, ambiguous, overly broad, unduly burdensome, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence in many respects, including for the reason that it asks the Archdiocese "to identify all documents relating to the relationship between you and Ross." The Archdiocese further objects to the extent that this interrogatory requests Ross's personal health information that is protected against unrestricted disclosure and use under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other applicable federal, state and local laws and regulations.

17. Describe the Defendant's policies and/or procedures regarding the duties and obligations of deacons, priests, bishops, and others serving within the structure of the Defendant Archdiocese pertaining to reports, allegations, and suspicions of sexual contact which were in effect during the period of time covering the allegations of this lawsuit, and identify all documents that reflect those policies and procedures.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese followed all reporting requirements, if any, mandated by Missouri law that were in effect during the relevant time period. The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. The Archdiocese further objects on the ground that the definition of the term "sexual contact" is overly broad. Plaintiff has not limited her request to sexual abuse of minors, but asks for "policies and/or procedures regarding the duties and obligations of deacons, priests, bishops,



and others serving within the structure of the Archdiocese pertaining to reports, allegations, and suspicions of sexual contact.”

18. Describe all changes, if any, made to the sexual contact policy as described in Interrogatory No. 17, including the dates of said changes, the manner in which said changes were distributed to those affected by said changes, and the agent of the Defendant Archdiocese responsible for making said changes.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese has and continues to follow all reporting requirements mandated by Missouri law. See the Archdiocese’s objections and answer to Interrogatory 17 above, incorporated herein by reference.

19. Describe each and every allegation of sexual contact with a minor made against any priest and/or employee serving within Defendant Archdiocese that was made known to any official of Defendant during the 20 years prior to and/or during the period of time covering the sexual contact alleged in this case.

**ANSWER:** The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, harassing, vexatious, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff has not defined the term “allegation” for the purpose of these interrogatories. Furthermore, Plaintiff has not limited her request to allegations of sexual activity with minors allegedly involving Ross, but has instead asked about allegations made “against any priest and/or employee serving within Defendant Archdiocese that was made known to any official of Defendant during the 20 years prior to and/or during the period of time covering the sexual contact alleged in this case.”

20. Describe each and every allegation of sexual contact with a minor made against any priest and/or employee serving within Defendant Archdiocese that was made known to any official of Defendant after the sexual contact alleged in this case.

**ANSWER:** The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, harassing, vexatious, irrelevant,

immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff has not defined the term "allegation" for the purpose of these interrogatories. Furthermore, Plaintiff has not limited her request to allegations of sexual activity with minors allegedly involving Ross, but has instead asked about allegations made "against any priest and/or employee serving within Defendant Archdiocese that was made known to any official of Defendant after the sexual contact alleged in this case." The Archdiocese further objects on the ground that Plaintiff has not defined "any official of Defendant." The Archdiocese further objects on the ground that any such allegations made known to the Archdiocese after the sexual contact alleged in this case are irrelevant to the claims made by Plaintiff in this action.

21. Identify all documents pertaining to sexual contact or alleged sexual contact with a minor by any priest and/or employee serving within Defendant Archdiocese that employees, agents or representatives of the Defendant Archdiocese have sent to the Apostolic Delegate to the Holy See or to any entity of the Holy See from 1980 to the present. For each document state:
  - a. The date of the document;
  - b. The date the document was sent to the entity of the Holy See;
  - c. A description of the document;
  - d. The name of the person sending the document and his/her position;
  - e. The name of the person receiving the document and his/her position; and
  - f. Whether any further discussion or correspondence followed either to or from an entity of the Holy See regarding the document.

**ANSWER:** The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, vexatious, harassing, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff does not limit this interrogatory to documents that the Archdiocese has submitted to the Apostolic Delegate, but asks for "all documents . . . that employees, agents or representatives of the Defendant Archdiocese have sent to the Apostolic Delegate to the Holy See or to any entity from 1980 to the present." Plaintiff has not limited this interrogatory to documents that pertain to Ross and his alleged sexual activity with minors, but asks for any documents that may have



been submitted to the Apostolic Delegate or Holy See on any subject matter involving this Archdiocese. Plaintiff also asks for documents submitted to the Apostolic Delegate for a period of time spanning over thirty years. Such requests violate the protections afforded under the First and Fourteenth Amendments of the United States Constitution. This interrogatory is not reasonably calculated to lead to admissible evidence pertaining to Plaintiff's claims that she was sexually abused by Ross while a minor.

22. Describe in detail and identify all documents relating to any warnings issued during the 20 years prior to and/or during the period of time covering the sexual contact alleged in this case by Defendant Archdiocese to authorities, parents, parishioners, or the general public relating in any way to any sexual activity or sexual contact by priests, deacons, employees or other persons working within the Archdiocese.

**ANSWER:** The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, harassing, vexatious, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff does not limit this interrogatory to the time period of the alleged events. Furthermore, Plaintiff has not limited her request to warnings regarding clergy, or specifically Ross, but has asked the Archdiocese to "[d]escribe in detail and identify all documents relating to any warnings issued . . . by Defendant Archdiocese to authorities, parents, parishioners, or the general public relating in any way to any sexual activity or sexual contact by priests, deacons, employees or other persons working within the Archdiocese."

23. Describe in detail and identify all documents relating to any secret or sub secreto files containing information relating to sexual contact or alleged sexual contact with a minor by any priest and/or employee serving within Defendant Archdiocese possessed by you at anytime, including those maintained by directive of Canon Law. If the secret or sub secreto files are no longer in your possession, for each document no longer in your possession state:
- a. Where you sent the documents;
  - b. The subject of the document;
  - c. The current location of the document;
  - d. The date of the document; and
  - e. Any other information you have relating in any way to the document.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese has no knowledge of any "secret or sub secreto" files. The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, harassing, vexatious, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff has not defined the terms "secret or sub secreto files" for purposes of these interrogatories.

24. Describe in detail all policies and procedures and identify all documents that relate to the creation, handling and/or destruction of secret or sub secreto files.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese has no knowledge of any "secret or sub secreto" files. The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, harassing, vexatious, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence. Plaintiff has not defined the terms "secret or sub secreto files" for purposes of these interrogatories.

25. Identify all expert witnesses you intend to call at any hearing or trial of this matter. For each expert witness, provide the following information, pursuant to Rule 56.01(b)(4) of the Missouri Rules of Civil Procedure:
- a. The name of the expert;
  - b. The addresses of the expert;
  - c. The expert's place of employment and occupation;
  - d. The qualifications of the expert to give an opinion in this matter;
  - e. The nature of the subject matter on which the expert will testify; and
  - f. The hourly deposition fee of the expert.

**ANSWER:** Subject to and without waiving the General Objections, the Archdiocese has not determined who will be its testifying expert or experts. Once the Archdiocese makes this determination, it will seasonably supplement this response in accordance with Missouri Supreme Court rules.



26. Identify all employees, teachers, priests, and other clergy who worked at St. Cronan's Church during the period of time of Defendant Ross's association with that school.

**ANSWER:** The Archdiocese objects to this interrogatory on the ground that it invades the privacy of persons not parties to this litigation. The Archdiocese further objects on the ground that any information requested for dates before or after Plaintiff's alleged abuse is irrelevant to Plaintiff's claims in this action. The Archdiocese further objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

27. Identify all information known to the Archdiocese regarding criminal investigations, arrests, criminal convictions, and/or expungements of criminal records pertaining to Defendant Ross. For each, describe:
- the circumstances of the investigation, arrest, conviction or expungement;
  - the dates of the investigation, arrest, conviction or expungement;
  - the conclusion of any investigation, arrest, conviction or expungement and following consequences;
  - describe any documents that the Archdiocese possesses regarding the investigations, arrests, convictions or expungements; Please attach the documents to your response;
  - Describe any involvement that the Archdiocese or its agents had in any of these investigations, arrests, criminal convictions and/or expungements including but not limited to, providing information to authorities or prosecutors, assisting Defendant Ross with representation or bond, and/or communications with Defendant Ross or his counsel during the pendency of any of the investigations, arrests or convictions;
  - Who had knowledge of the criminal investigations, arrests, criminal convictions, and/or expungements of criminal records and when.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will provide relevant non-privileged information responsive to this request, if any, including personnel and/or health records of Ross, if any, only upon prior written notice to counsel for Ross which allows adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court, or, in the alternative, upon the entry of an appropriate order by the Court requiring the Archdiocese to provide responsive non-

privileged documents. The Archdiocese objects to this interrogatory to the extent that it requests information contained in Ross's personnel file on the ground that it invades the privacy of Defendant Ross. Specifically, the Missouri Supreme Court has held that "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed." State ex. rel. Delmar Gardens North Operating, LLC v. Gaertner, 239 S.W.3d 608, 611-12 (Mo. 2007) (en banc) (citing State ex rel. Crowden v. Dandurand, 970 S.W. 2d 340, 343 (Mo. banc 1998)) (emphasis added). The Archdiocese further objects to this interrogatory on the basis that it is overly broad and unlimited in time and scope, as it requests all information regarding criminal investigations, convictions, etc., regardless of date and regardless of whether such investigation, conviction, etc. has any connection to this lawsuit. The Archdiocese further objects on the basis that this interrogatory is vague, ambiguous, unduly burdensome, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

28. Identify all state child welfare investigations pertaining to Defendant Ross. For each, describe:
- a. the circumstances of the investigation;
  - b. the dates of the investigation;
  - c. the conclusion of any investigation and following consequences;
  - d. describe any documents that the Archdiocese possesses regarding the investigations;
  - e. Describe any involvement that the Archdiocese had in any of these investigations. Please attach the documents to your response.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will provide relevant non-privileged information responsive to this request, if any, including personnel and/or health records of Ross, if any, only upon prior written notice to counsel for Ross which allows adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court, or, in the alternative, upon the entry of an appropriate order by the Court requiring the Archdiocese to provide responsive non-privileged documents. The Archdiocese objects to this interrogatory to the extent that it requests



information contained in Ross's personnel file on the ground that it invades the privacy of Defendant Ross. Specifically, the Missouri Supreme Court has held that "Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed," State ex. rel. Delmar Gardens North Operating, LLC v. Gaertner, 239 S.W.3d 608, 611-12 (Mo. 2007) (en banc) (citing State ex rel. Crowden v. Dandurand, 970 S.W. 2d 340, 343 (Mo. banc 1998)) (emphasis added). The Archdiocese further objects to this interrogatory on the basis that it is overly broad and unlimited in time and scope, as it requests identification of all child welfare investigations pertaining to Ross, regardless of date and regardless of whether any such investigation has any connection to this lawsuit. The Archdiocese further objects on the basis that this interrogatory is vague, ambiguous, unduly burdensome, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

29. Describe in detail all communications made to clergy, parishioners, parents, or employees of St. Cronan's Church regarding Defendant Ross from before, during and/or after his time serving at St. Cronan's Church. If any of the communications are in writing, please provide.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will provide relevant non-privileged information responsive to this request, if any, including personnel and/or health records of Ross, if any, only upon prior written notice to counsel for Ross which allows adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court, or, in the alternative, upon the entry of an appropriate order by the Court requiring the Archdiocese to provide responsive non-privileged documents. The Archdiocese objects to this interrogatory on the ground that any information requested for dates before or after Plaintiff's alleged abuse is irrelevant to Plaintiff's claims in this action. The Archdiocese further objects to this interrogatory on the grounds that it is vague, ambiguous, overly broad, unduly burdensome, irrelevant, immaterial, and not reasonably calculated to lead to the discovery of admissible evidence.

30. Describe in detail any writings, journals, letters, or notes made by Defendant Ross that are known to the Archdiocese. Please provide any that are in the possession of the Archdiocese.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will provide relevant non-privileged information responsive to this request, if any, including personnel and/or health records of Ross, if any, only upon prior written notice to counsel for Ross which allows adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court, or, in the alternative, upon the entry of an appropriate order by the Court requiring the Archdiocese to provide responsive non-privileged documents. The Archdiocese objects to this interrogatory to the extent that it requests Ross's personal health information that is protected against unrestricted disclosure and use under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other applicable federal, state and local laws and regulations. The Archdiocese further objects to this interrogatory on the basis that it is overly broad and unlimited in time and scope, as it requests every writing, journal, letter or note made by Ross regardless of the subject matter or date. The Archdiocese further objects on the grounds that this interrogatory is vague, ambiguous, unduly burdensome, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

31. Describe the physical layout of St. Cronan's Church and Parish Center.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will make St. Cronan's Church and Parish Center available for inspection to be scheduled at a mutually convenient time. The Archdiocese objects to this interrogatory on the grounds that it is vague, ambiguous and overly broad. The Archdiocese



further objects that the best evidence of the physical layout of St. Cronan's Church and Parish Center is the building itself.

32. Describe any communications or records passed between any employee, representative, or agent of the Archdiocese and any representative, employee or agent of the St. Luke Institute regarding Defendant Ross. Provide any that are in writing.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, the Archdiocese will provide relevant non-privileged information responsive to this request, if any, including personnel and/or health records of Ross, if any, only upon prior written notice to counsel for Ross which allows adequate time to object to any production of documents and upon the entry of an appropriate protective order by the Court, or, in the alternative, upon the entry of an appropriate order by the Court requiring the Archdiocese to provide responsive non-privileged documents. The Archdiocese objects on the basis that this interrogatory requests Ross's personal health information that is protected against unrestricted disclosure and use under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and other applicable federal, state and local laws and regulations. The Archdiocese further objects to this interrogatory on the basis that it is overly broad and unlimited in time and scope, as it requests every communication or record regarding Ross regardless of the subject matter or date. The Archdiocese further objects on the grounds that this interrogatory is vague, ambiguous, unduly burdensome, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

33. Describe any communications between any employee, representative, attorney or agent of the Archdiocese and any representative, employee or agent of the public media regarding Defendant Ross.

**ANSWER:** The Archdiocese objects on the basis that this interrogatory is overly broad and unlimited in time and scope, as it requests every communication regarding Ross regardless of the subject matter or date. The Archdiocese further objects on the grounds that this

interrogatory is vague, ambiguous, unduly burdensome, irrelevant, immaterial and not reasonably calculated to lead to the discovery of admissible evidence.

34. Describe in detail the relationship between the Archdiocese and St. Cronan's Church and Parish Center including but not limited to property ownership, bylaws, incorporation, and/or any document showing the authority that the Archdiocese has over St. Cronan's Church and Parish Center.

**ANSWER:** Subject to and without waiving the General Objections or the following objections, St. Cronan Catholic Church is incorporated as a Missouri nonprofit corporation. The board of directors of the corporation is comprised of three persons. The Archbishop of St. Louis is the member of the corporation. In such capacity he has the authority to appoint and remove the directors and exercises other reserved powers granted to him through the bylaws of the corporation.

The Archdiocese of St. Louis is incorporated as a Missouri nonprofit corporation. The board of directors of the corporation is comprised of three persons, one of whom is the Archbishop of St. Louis who is also the member of the corporation and, in such capacity, appoints and may remove the other directors and exercises other reserved powers granted to him through the bylaws of the corporation.

Neither St. Cronan Catholic Church nor the Archdiocese of St. Louis has any authority over the other.

The property on which St. Cronan Catholic Church and its Parish Center are located is legally owned by the St. Louis City Catholic Church Real Estate Trust and is beneficially owned by St. Cronan Catholic Church, subject to the terms of the indenture establishing the Trust. The property is leased by the Trust to St. Cronan Catholic Church on a triple net basis without the payment of rent.



The Archdiocese objects to this Interrogatory as overly broad, vague and ambiguous. The Archdiocese further objects on the ground that any information requested for dates before or after the dates of Plaintiff's claimed sexual abuse is irrelevant to Plaintiff's claim in this action.

35. Describe in detail and identify all documents relating to the Plaintiff in this matter or her family members including but not limited to, marriage records, baptism records, communion records, religious or other education documents, photographs, etc.

**ANSWER:** Subject to and without waiving the General Objections or the following objection, the Archdiocese's investigation continues, and the Archdiocese will supplement this response as it discerns any responsive information. The Archdiocese objects to this interrogatory on the ground that it requests information equally available to Plaintiff.

36. Describe each and every report or statement made by you to anyone regarding the facts of the incidents which are the subject matter of this litigation or any events leading up to the occurrence of said incidents or any events occurring immediately thereafter. As to each, please provide the following:
- a. The type of the report or statement, whether written, oral, recorded, reported or otherwise;
  - b. The date of said statement and by whom it was made;
  - c. The name, address and employer of the custodian of any permanent form of said statement;
  - d. If you are making a claim of privilege with regard to any of said statements or reports, please state the basis of said privilege; and
  - e. Attach copies of each document identified in this interrogatory.

**ANSWER:** This interrogatory is virtually identical to Interrogatory No. 13. Please see the Archdiocese's answer and objections to Interrogatory No. 13.

VERIFICATION

STATE OF MISSOURI     )  
                                  )  
COUNTY OF ST. LOUIS   )     ss.

I, Reverend Monsignor Mark Rivituso, being first duly sworn upon my oath, hereby state and aver that I am the Vicar General of the Archdiocese of St. Louis and, as such, am authorized to make these answers on behalf of the Archdiocese of St. Louis; and that I have read the foregoing Answers and Objections to Plaintiff's First Set of Interrogatories and the statements contained therein are true and correct to the best of my knowledge, information and belief.

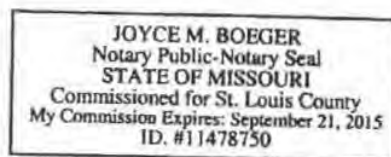
  
Rev. Msgr. Mark Rivituso

Subscribed and sworn to before me this 20 day of June, 2012.

  
Notary Public

My Commission Expires:

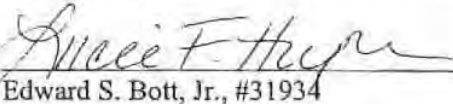
9/21/15





Dated: July 5, 2012

GREENSFELDER, HEMKER & GALE, P.C.

By 

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#### **CERTIFICATE OF SERVICE**

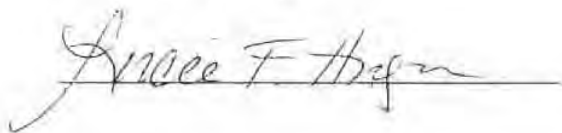
The undersigned hereby certifies that a true and accurate copy of the foregoing document was served on the following counsel of record, via U.S. Regular Mail, with postage prepaid, this 5th day of July, 2012:

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IN THE CIRCUIT COURT OF ST. LOUIS CITY  
TWENTY-SECOND JUDICIAL DISTRICT  
STATE OF MISSOURI

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22ND JUDICIAL  
CIRCUIT CLERK  
2013 MAR -5 PM  
FILE ROOM  
CLERK

JANE DOE 92,

Plaintiff,

vs.

ARCHDIOCESE OF ST. LOUIS, a Non-  
Profit Corporation, ARCHBISHOP  
ROBERT J. CARLSON of the Archdiocese  
of St. Louis, and FATHER JOSEPH ROSS,

Defendants.

Cause No.: 1122-CC10165

Div. 1

**PLAINTIFF'S MOTION TO COMPEL DEFENDANT ARCHDIOCESE OF ST. LOUIS  
TO RESPOND TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF  
DOCUMENTS**

Plaintiff Jane Doe 92, pursuant to Rule 61.01 (b) and (d) of the Missouri Rules of Civil Procedure, respectfully moves this Court for an order compelling Defendant Archdiocese of St. Louis ("Archdiocese") to respond to interrogatories and requests for production of documents propounded by Plaintiff.

**MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION TO COMPEL**

Plaintiff was sexually abused by Defendant Father Joseph Ross from 1997 until approximately 2001. (Exhibit A - Petition, ¶¶ 20, 40.) Prior to that time, Defendant Archdiocese was aware that Defendant Ross had abused children while working at another assignment. (Petition ¶¶ 12, 35, 44, 49, 61.) Thus, Plaintiff makes claims against the Archdiocese for Vicarious Liability, Negligent Supervision of Priest, Intentional Failure to Supervise Clergy and Negligent Failure to Supervise Children. (Petition ¶¶ 39 - 65.)

On January 13, 2012, Plaintiffs served Plaintiff's First Interrogatories to Archdiocese of St. Louis and Plaintiff's First Document Requests to Defendant Archdiocese of St. Louis (Ex. B -



Certificate of Service January 13, 2012; Exhibit C – Plaintiff’s First Interrogatories to Archdiocese of St. Louis; Exhibit D – Plaintiff’s First Document Requests to Defendant Archdiocese of St. Louis).

On July 5, 2012, Defendant Archdiocese served Defendant Archdiocese of St. Louis’ Answers and Objections to Plaintiff’s First Interrogatories (“Answers to Interrogatories”) and Defendant Archdiocese of St. Louis’ Responses and Objections to Plaintiff’s First Request for Production of Documents (“Responses to Document Requests”) (Exhibit E - Answers to Interrogatories, Exhibit F - Responses to Document Requests). In its Answers to Interrogatories and Responses to Document Requests, the Archdiocese made a number of objections and refused to provide requested information.

In response, on July 12, 2012, counsel for Plaintiff wrote a letter to counsel for Defendant Archdiocese attempting to resolve this discovery dispute without the need for this Court to intervene. (Exhibit G.) In response, counsel for the Archdiocese wrote a letter dated July 23, 2012 resolving some of the discovery disputes, but maintaining the Archdiocese’s position on remaining discovery disputes. What remains is a dispute between the Plaintiff and the Archdiocese about disclosure in three areas. First, the Archdiocese has not produced a privilege log describing which documents are being withheld on the basis that they are protected by some legal privilege. Second, the Archdiocese refuses to produce Defendant Ross’ personnel file unless there is a court-ordered protective order. Third, the Archdiocese refuses to provide any information about its handling of reports of sexual misconduct involving a minor against any other priest or employee within the Archdiocese. As discussed below, this Court should compel the Archdiocese to produce a privilege log, disclose Defendant Ross’ personnel file and produce the

information requested about sexual misconduct by all priests or employees within the Archdiocese.

**A. The Archdiocese Has Not Produced a Privilege Log**

The Archdiocese's Answers and Objections to Plaintiff's First Interrogatories do not comply with the Missouri Rules of Civil Procedure. Missouri Rule 56.01 allows a party to obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

Moreover, under Rule 57.01, when a party withholds information based upon a privilege, then the reason for the objection shall be stated along with information that will permit others to assess the applicability of the privilege or work product doctrine. The common practice is for a party asserting a privilege to provide a privilege log containing this information. Despite asserting a number of privileges and the work product doctrine, the Archdiocese has not provided a privilege log in violation of Rule 57.01. Consequently, Plaintiff requests that this Court compel the Archdiocese to produce a privilege log for all information and for each document it refuses to produce that it claims is privileged.

**B. The Archdiocese Must Produce Fr. Ross' Personnel File Without a Protective Order**

The personnel file of Defendant Ross is critical to the prosecution of this lawsuit. In Count III of Plaintiff's Petition, Plaintiff pleads a claim for Intentional Failure to Supervise Clergy. (Ex. A, ¶¶ 47 – 57.) A cause of action for intentional failure to supervise clergy is stated if (1) a



supervisor (or supervisors) exists, (2) the supervisor (or supervisors) knew that harm was certain or substantially certain to result, (3) the supervisor (or supervisors) disregarded this known risk, (4) the supervisors' inaction caused damage, and (5) the other requirements of the Restatement (Second) of Torts, section 317 are met. *Gibson v. Brewer*, 952 S.W.2d 239, 248 (Mo. Banc 1997).

Defendant Fr. Ross' personnel file, will likely contain evidence to support this claim. For example, Fr. Ross' personnel file will contain information about who supervised Fr. Ross at the time he was sexually abusing Plaintiff. Defendant Fr. Ross' personnel file may also contain evidence of other reports of sexual misconduct by Ross. Such information would be evidence that the Defendant Archdiocese was aware that allowing Fr. Ross unsupervised access to parish children, including the Plaintiff, posed a risk that harm would result. The same can be said about Fr. Ross' health records in the possession of the Archdiocese. If Fr. Ross was treated for anything relating to sexual misconduct and the Archdiocese knew about it, that would constitute significant notice to the Archdiocese that Fr. Ross was a risk to sexually abuse the Plaintiff. It is important to review all medical records relating to Fr. Ross because for many years, sexual misconduct treatment was subsumed under the umbrella of other psychiatric problems like alcoholism and depression. See Doyle, Sipe and Wall, *Sex, Priests, and Secret Codes: The Catholic Church's 2,000-Year Paper Trail of Sexual Abuse*, p. 67-8 (2006). In addition, Fr. Ross' personnel file would also list all of Fr. Ross' parish assignments and the other priests with whom he worked. These people may have witnessed acts by Fr. Ross that would constitute notice to the Archdiocese. For all of these reasons, Plaintiffs seek disclosure of Fr. Ross' personnel file.

As discussed, the Archdiocese refuses to produce Fr. Ross' priest personnel file unless the Court enters a protective order. The reason for refusing to produce this file is that Fr. Ross has a privacy right in keeping his personnel file secret. As legal support, the Archdiocese cites *State ex. rel. Delmar Gardens North Operating, LLC v. Gaertner*, 239 S.W.3d 608, 611-12 (Mo. banc 2007) and the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Neither of these legal sources supports the Archdiocese's refusal to produce Fr. Ross' priest personnel file.

Missouri does recognize a right of privacy in personnel records; however, Missouri Courts have consistently held that personnel records are discoverable as long as the inquiry relates to matters put at issue in the pleadings. *State ex rel. Delmar Gardens*, 239 S.W.3d at 611-12. One of Plaintiff's claims is intentional failure to supervise clergy, which requires proof that the Archdiocese was aware of prior misconduct by Defendant Ross. As discussed above, personnel file documents are one of the sources of the Archdiocese's knowledge about Defendant Ross' sexual misconduct. Clearly, Plaintiff's requests relate to matters put at issue in the pleadings.

In addition, the Archdiocese's position regarding HIPAA is similarly flawed. HIPAA specifically provides that protected health information may be produced in the course of any judicial or administrative proceeding in response to a subpoena or discovery request. 45 C.F.R. § 164.512 (e).

In its communications, the Archdiocese makes it very clear that it will not produce Fr. Ross' priest personnel file unless and until there is a protective order entered pursuant to Rule 56.01(c) limiting further disclosure of the contents of the personnel file. The Archdiocese is not entitled to such a protective order. According to Rule 56.01 (c), a party must show good cause in order for a court to issue a protective order. Mo. R. Civ. Proc. 56.01 (c). There is no such good



cause protecting Fr. Ross' personnel file in the current case. This is especially the case here because discovery documents are presumptively public documents and public policy supports public disclosure of Fr. Ross' personnel file.

### **1. Discovery Documents are Presumptively Public Documents**

In Missouri, there is a common law right of public access to court and other public records. *Transit Cas. Co. ex rel. Pulitzer Publ'g Co. v. Transit Cas. Co. ex rel. Intervening Employees*, 43 S.W.3d 293, 300 (Mo. 2001). This common law right of public access has been codified in the Missouri Supreme Court Operating Rule 2.02 (2010), which states in part:

Records of all courts are presumed to be open to any member of the public for purposes of inspection or copying during the regular business hours of the court having custody of the records. This policy does not apply to records that are confidential pursuant to statute, court rules or court order; judicial or judicial staff work product; internal electronic mail; memoranda or drafts; or appellate judicial case assignments.

Whether information disclosed during discovery that is not filed with the court shares this presumption of being public has not been considered by the State Appellate Courts in Missouri. However, there is some guidance on this issue in the Missouri Rules of Civil Procedure. For example, Rule 56.01 (c) allows a court, only after a showing of good cause, to issue a protective order protecting information produced during discovery from public disclosure. Mo. R. Civ. Proc. 56.01(c). This rule assumes that information and documents produced during discovery are available to the public and only upon a showing of good cause may the court issue a protective order limiting public access to the discovery materials.

Another indication that information produced during discovery is presumed open to the public is that the Missouri Supreme Court in its decision in *Transit Cas. Co. ex rel. Pulitzer Publ'g Co.*, 43 S.W.3d at 300, cites to *San Jose Mercury News v. United States Dist. Ct.*, 187 F.3d 1096,

1102 (9th Cir.1999) as support for public access to court records. The reason that this particular citation is important is that *San Jose Mercury News* also held that “It is well-established that the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public.” *San Jose Mercury News, Inc.*, 187 F.3d at 1103.

Moreover, the Missouri discovery rules are substantially similar to the federal discovery rules and a number of federal courts have held that discovery materials are presumptively public. Missouri’s scope of discovery rule found in Rule 56.01 is substantially similar to the Federal Rule 26. See Mo. R. Civ. Proc. Rule 56.01(b); Fed. R. Civ. Proc. 26(b). Both rules have a provision for protective orders upon a showing of good cause. See Mo. R. Civ. Proc. Rule 56.01 (c); Fed. R. Civ. Proc. 26 (c). Further, both sets of rules provide that discovery responses not be filed with the court unless and until there is a discovery dispute requiring a motion to compel. See Mo. R. Civ. Proc. Rule 57.01 (d); Fed. R. Civ. Proc. 5 (d). Thus, decisions from federal courts on the issue of whether discovery responses are presumptively public should be instructive.

For example, in *Jones v. Clinton*, 16 F. Supp. 2d 1054, 1055-56 (E.D. Ark. 1998), a case involving the President of the United States, the District Court Judge ruled that discovery materials in the possession of the parties that had not been filed with the District Court would be released as long as the Court did not determine that public disclosure would not (1) impact upon the parties’ rights to a fair trial and/or (2) do not adversely affect the privacy interests of any Jane Does. With that said, the issue of public access to civil court records remains illusive within the Eighth Circuit. In *Goff v. Graves*, 362 F.3d 543, 550 (8th Cir. 2004), the Eighth Circuit acknowledged that “[A]ny right of access to records from civil proceedings, if it exists (a question we never have decided), is not absolute.” *Citing to Webster Groves Sch. Dist. v. Pulitzer Publ’g Co.*, 898 F.2d



1371, 1376 (8th Cir.1990); *see also In re Search Warrant for Secretarial Area Outside Office of Gunn*, 855 F.2d 569, 573-4 (8th Cir.1988) (First amendment right of public access extends to the documents filed in support of search warrant applications).

Generally, federal courts in other Circuits have held that discovery documents are presumptively public. In *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 424-25 (9th Cir. 2011) *cert. denied*, 132 S. Ct. 1867, 182 L. Ed. 2d 645 (U.S. 2012), the Court of Appeals acknowledged that the public is permitted access to litigation documents and information produced during discovery. *See also Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002) (Generally, the public can gain access to litigation documents and information produced during discovery unless the party opposing disclosure shows “good cause” why a protective order is necessary.); *San Jose Mercury News, Inc. v. United States Dist. Ct.*, 187 F.3d at 1103 (“[i]t is well-established that the fruits of pre-trial discovery are, in the absence of a court order to the contrary, presumptively public. Rule 26(c) authorizes a district court to override this presumption where ‘good cause’ is shown.”); *In re Agent Orange Product Liability Litig.*, 821 F.2d 139, 145 (2d Cir.1987) (“[I]f good cause is not shown, the discovery materials in question should not receive judicial protection and therefore would be open to the public.”); *But see Bond v. Utreras*, 585 F.3d 1061, 1073-78 (7th Cir. 2009) (Pretrial discovery responses are not presumptively public.)

Thus, it appears that most sources of authority support the conclusion that discovery responses are presumptively public. In addition, the Archdiocese has not made any showing of good cause to keep Defendant Ross’ personnel file secret. Without that showing, the Archdiocese is not entitled to withhold this information. Consequently, the Archdiocese is violating the

Missouri Rules when it refuses to respond to Plaintiff's discovery requests unless there is a protective order.

**2. Making the personnel file of a convicted child molester public is good public policy.**

**a. A Protective Order is Against Public Health and Safety as it Seeks to Keep Information About An Accused Child Sex Offender Secret.**

There should not be a protective order for Fr. Ross' personnel file because such a protective order would be against public safety and health. In *Murphy v. Kmart Corp.*, 255 F.R.D. 497, 503 (D.S.D. 2009), the court acknowledged that circumstances weighing against issuance of a protective order requiring confidentiality exist when confidentiality is being sought over information important to public health and safety.

Further, in *New York v. Ferber*, 458 U.S. 747, 757 (1982), the United States Supreme Court recognized that "[t]he prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance." Accordingly there is a compelling public interest in documents about child sex offenders, their modus operandi, etc. and also a compelling interest in making public information about an organization that covered up and concealed child sex offenders for decades. Further, the protective order could pose a present health risk and danger to children. Fr. Ross is still living somewhere without any known restrictions. Fr. Ross is not in jail and he may still be a threat to sexually abuse children, none of whom have any idea of Fr. Ross' sexually abusive past.

In addition, the Archdiocese's desire for a protective order relating to Fr. Ross' personnel file is requesting this Court to engage in the exact same behavior that caused Jane Doe 92 to be

sexually abused – suppressing all information about a sex offending priest. The Archdiocese knew that Fr. Ross had sexually abused a child prior to Fr. Ross being assigned to Plaintiff's parish. Despite that knowledge, the Archdiocese assigned Fr. Ross to Plaintiff's parish; however, the Archdiocese suppressed all previous information about Fr. Ross. This left Plaintiff and her family in the position where Plaintiff was allowed to spend time with Fr. Ross without any supervision by anyone else. Just like the protective order that the Archdiocese seeks here, the Archdiocese chose to keep Fr. Ross' past secret. This Court must not participate in this secrecy because this type of secrecy will only endanger more children.

**b. Release of Fr. Ross' Personnel File Will Assist the Community in  
Recognizing and Preventing Abuse.**

Access to the personnel file of Fr. Ross will allow the St. Louis community to continue its ongoing confrontation with the reality of child abuse, and thereby help to recognize and reduce the prevalence of child sexual abuse. Sadly, child sexual abuse is too common. *See* John E.B. Meyers, 1 *Evidence in Child Abuse and Neglect Cases* §5.2 at 414 n. 23 (3d ed. 1997) (“as many as 10% to 15% of boys and 20% to 25% of girls experience” some abuse before age 18), quoting Friedrich, et al., *Normative Sexual Behavior in Children*, 88 *Pediatrics* 456, 462 (1991). With the publicity accompanying this case and others like it, it has become more accepted in society that child abuse claims are legitimate and represent an unfortunately common experience of many people. The key to education in this area is exposure. *See* Jan Rispens, André Aleman, Paul P. Goudena, *Prevention of Child Sexual Abuse Victimization: A Meta-analysis of School Programs*, 21 *Child Abuse & Neglect* 975 (1997).



Fr. Ross' personnel file will be a resource for the public to come to an understanding of how a convicted sex offender came to be assigned as a priest to a church without anyone in the parish knowing it. The personnel file will also provide valuable information about the behavior of child molesters and institutional failures that allow them unsupervised access to children. Attention and access to this resource can only serve to improve child abuse awareness and prevention, as well as to give institutional professionals a unique insight into better methods of preventing child abuse.

**c. Release of the Files Will Allow Other Victims of Fr. Ross To Begin the Healing Process.**

The sight of an abuser's name in the media and the knowledge that the victim was not the only victim of a particular perpetrator are both common triggers for abuse victims to begin processing their abuse, and in this way, to begin the healing process and getting the help they need and deserve. A child who is abused by a trusted adult is left in a world of isolation, shame and secrecy. See Mike Lew, *Victims No Longer* 161 (2004) ("Secrecy is the cement that holds child abuse firmly in place"). As one author put it, "Childhood sexual abuse is the darkest of secrets, relegated to silence through the most vile forms of trickery, threats and abuse of trust. Since the molester frequently is a role model or other trusted figure ... the child is reluctant to act contrary to any demands placed upon her. . . . Thus, the child's dependency and innocence are abused to prevent recognition or revelation of the abuse. For many children trapped in the netherworld of sexual abuse, revealing the secret is never an option." Rebecca L. Thomas, *Note, Adult Survivors of Childhood Sexual Abuse and Statutes of Limitations: A Call for Legislative Action*, 26 Wake Forest L Rev 1245, 1250 (1991).

As might be expected, “chronic child abuse promotes avoidance behaviors,” and secrecy reinforces that desire to wall off the abuse. John Briere, *Psychological Assessment of Child Abuse Effects in Adults*, in *Assessing Psychological Trauma and PTSD* 540-41 (Wilson and Keane eds. 2004). In fact, most children never tell anyone that they have been abused. This process is known in professional literature as “child sexual abuse accommodation syndrome (CSAAS), a theoretical model that posits that sexually abused children frequently display secrecy, tentative disclosures, and retractions of abuse[.]” Kamala London et al., *Disclosure of Child Sexual Abuse: What Does the Research Tell us About the Ways That Children Tell?* 11 Psychol Pub Pol’y & L 194, 195 (2005). In a review of eleven studies of child sex abuse disclosure rates, “the modal childhood disclosure rate (in 6 of the 11 studies) is just over 33%.” *Id.*, at 199. That means of the adults willing to admit being abused as children, only one-third reported it at the time.

Secrecy usually ends up sealing off the abuse for years, as coping mechanisms often cause a child not to realize or experience the injuries resulting from sexual abuse for many years, until the symptoms are forced into plain view by a trigger. Thomas, *Adult Survivors*, at 1255. Experience of victims has shown that one of these triggers is seeing the name or picture of the abuser in the media, causing a realization that the victim was not the only one. It is only when the victim breaks through that secrecy, and acknowledges that the abuse happened and had an impact on her life that the healing can begin. See Lew, *Victims No Longer* at 168 (“Survivors and the therapists that work with them insist that [disclosure] is the essential first step toward recovery”); Judith Herman, *Trauma and Recovery: The Aftermath of Violence - From Domestic Abuse to Political Terror* 98 (1992) (overcoming secrecy is literally the first step to obtaining any kind of remedy for sexual abuse because sexual abuse thrives on secrecy). Public disclosure of Fr. Ross’

personnel file will likely provide the trigger needed for other victims of Fr. Ross, or any other member of the clergy, to begin getting the help that he or she needs and deserves.

**d. Release of the Files Will Destroy the Secrecy That Emboldens Child Abusers.**

Finally, release of Fr. Ross' personnel file will, in its own way, help to chip away at the idea in the public consciousness that child abuse can be kept secret at all. Secrecy emboldens abusers, public disclosure of the contents of Fr. Ross' personnel file will demonstrate that society is no longer willing to stay quiet for fear of embarrassing those who abuse and molest children. The release to the public of Fr. Ross' personnel file will also send a signal to child molesters and the organizations that conceal and protect them that they cannot keep these crimes hidden from the light of day forever. As noted above, and as noted by courts across the country, "[w]here there is child abuse, there will invariably be secrecy." *State v. Tanner*, 675 P.2d 539, 547 (Utah 1983), *superseded on other grounds*, *State v. Walker*, 743 P.2d 191 (Utah 1987). But when molesters know that instead of being quietly shuffled off away from whatever victim has been discovered "this time," they will face the harsh glare of the public eye, they will hopefully molest fewer children. Justice Brandeis' classic aphorism rings true here: "Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." Louis D. Brandeis, *Other People's Money, and How the Bankers Use It* 92 (1914). The "electric light" of press attention and the constant threat of discovery and publicity for one's crimes will inevitably have some deterrent effect.

**C. The Archdiocese Must Produce All Information Relating to Sexual Misconduct With Minors By Any Priest or Other Employee**



As discussed, Plaintiff seeks information about other reports of sexual misconduct involving a minor against any other priest or employee within the Archdiocese. Information about other sexual misconduct by Archdiocese priests and employees is important to prove that the Archdiocese's failure to properly supervise Fr. Ross was intentional and not simply a mistake or poor management. (Ex. A, ¶¶ 47 – 57.) As discussed, a cause of action for intentional failure to supervise clergy requires proof that (1) a supervisor exists, (2) the supervisor knew that harm was certain or substantially certain to result, (3) the supervisor disregarded this known risk, (4) the supervisor's inaction caused damage, and (5) the other requirements of the Restatement (Second) of Torts, section 317 are met. *Gibson v. Brewer*, 952 S.W.2d 239, 248 (Mo. Banc 1997).

Here, other incidents of sexual misconduct involving minors by Archdiocese employees where the Archdiocese also concealed the abuse from parishioners would be admissible in the current matter as evidence that it was the Archdiocese's habit, routine or practice to conceal prior sexual misconduct by its priests and employees from parishioners and that the Archdiocese knew that placing a sexual abuser in a parish would certainly result in harm to parish children.

Habit evidence “is relevant to prove that the conduct of the person ... on a particular occasion was in conformity with the habit or routine practice.” *Zempel v. Slater*, 182 S.W.3d 609, 617-18 (Mo. Ct. App. 2005), citing *Hawkins v. Whittenberg*, 587 S.W.2d 358, 364 n. 2 (Mo.App. S.D.1979). A habit is a person's “regular practice of meeting a particular kind of situation with a specific type of conduct.... The doing of habitual acts may become semi-automatic.” *Id.* To be admissible, the habit must be “sufficiently regular and uniform, or the circumstances sufficiently similar to outweigh the danger, if any, of prejudice or confusion.” *Id.*; see also *State v. Ernst*, 164

S.W.3d 70, 74 (Mo.App. S.D.2005) (using above principles to conclude that evidence of one incident was insufficient proof of the defendant's habit or routine).

Consequently, other reports of sexual misconduct involving a minor against any other priest or employee within the Archdiocese is discoverable and admissible in the current matter. Accordingly, Plaintiff requests this Court to compel the Archdiocese to produce this information.


### CONCLUSION

Plaintiff seeks an order from this Court compelling the Archdiocese to:

- Produce a log of all information and documents being withheld based upon any privilege;
- Produce Fr. Ross' personnel file without any protective order;
- Produce all information and documents relating to other reports of sexual misconduct involving minors by any priests or other employees within the Archdiocese.

As Missouri law requires such a production, Plaintiff requests an order compelling production of each of these items.

DATED: March 5, 2013

  
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**CERTIFICATE OF SERVICE**

This is to certify that the foregoing Motion to Compel has been sent by U.S. Mail postage prepaid on this 5<sup>th</sup> day of March, 2013 to the following attorneys for Defendants:

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A handwritten signature in cursive script, appearing to read "R. Duckels", is written over a horizontal line.



IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI

13 MAY -6 PM 4:14

JANE DOE 92,

Plaintiff,

vs.

ARCHDIOCESE OF ST. LOUIS, et al.

Defendant.

Case No. 1122-CC10165

Division 1

**DEFENDANTS' MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFF'S MOTION TO COMPEL**

This Memorandum of Law is filed on behalf of Defendants Archdiocese of St. Louis and Archbishop Robert J. Carlson (collectively the "Archdiocese"), in opposition to Plaintiff's Motion to Compel Defendant Archdiocese of St. Louis to Respond to Interrogatories and Requests for Production of Documents.

**INTRODUCTION**

Plaintiff moves to compel the Archdiocese to respond to certain types of discovery. The motion is divided into three basic requests: (a) That the Archdiocese provide a privilege log; (b) That the Archdiocese produce the confidential personnel file of (unserved) co-Defendant, Father Joseph Ross ("Ross") *without* a protective order; and (c) That Plaintiff be permitted to discover, without restriction, all documents and information regarding "each and every allegation of sexual contact with a minor made against any priest and/or employee serving within the Archdiocese" dating back to the 1970's.

The Archdiocese's position in response ranges from agreement, to partial agreement, to strict opposition. The Archdiocese agrees that it is obligated to provide a privilege log, and has done so. The Archdiocese also agrees that the Ross personnel file is discoverable. However,

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under well-established Missouri law, personnel files are “fundamentally” confidential and should only be produced subject to protective order. Finally, the Archdiocese rejects Plaintiff’s request for any and all documentation and information regarding any allegation of abuse, regardless of who, what, where and when. The request is harassing, overbroad, unduly burdensome, and in light of Plaintiff’s own motion, a transparent attempt to improperly litigate this this case in the media. Moreover, it seeks information that would be inadmissible in any event.

### **ARGUMENT**

**I. The Archdiocese Does Not Dispute That It Owes Plaintiff A Privilege Log And Has Provided One.**

Plaintiff is correct regarding the Archdiocese’s obligation to produce a privilege log to the extent it is withholding documents under the assertion of a privilege or confidentiality doctrine. As such, the Archdiocese served its privilege log on Plaintiff’s counsel contemporaneously with the filing of this pleading.

**II. Consistent With Missouri Law, The Archdiocese Will Voluntarily Produce The Ross Personnel File Subject To A Protective Order.**

As noted in its response to Plaintiff’s “golden rule letter,” the Archdiocese has never disputed that the Ross personnel file is “discoverable.” (See Plttf. Mtn. **Exhibit G.**) But Plaintiff confuses discoverable with non-confidential. The Missouri Supreme Court holds that these concepts are dissimilar. Moreover, Missouri state courts in this exact context have repeatedly issued protective orders regarding priest personnel files. This is well known to Plaintiff’s counsel, who was attorney of record in these instances. This is likely why Plaintiff looks to federal case law, which is split on this point, regarding a general proposition that discovery documents are “public records.” While some federal jurisdictions recognize this as a

general proposition – though Missouri does not – they likewise recognize personnel records as an exception, rightly subject to confidentiality considerations preserved through protective orders.

A. In Missouri, Personnel Records Are Private And Confidential As A “Fundamental” Right.

As Plaintiff notes, in withholding the Ross personnel file subject to issuance of a protective order, the Archdiocese relied primarily on the Missouri Supreme Court’s decision in State ex rel. Delmar Gardens, 239 S.W.3d. 608 (Mo. banc 2007). The case is directly on point, controls here, and flatly refutes Plaintiff’s unsupported contention that, under Missouri law, “the Archdiocese is not entitled to [ ] a protective order.” (Pltff. Mtn. at 5.)

As the Missouri Supreme Court explained, “Missouri recognizes a right of privacy in personnel records that should not be lightly disregarded or dismissed.” Delmar Gardens, 239 S.W.3d at 611, citing State ex rel. Crowden v. Dadurand, 970 S.W.2d 340, 343 (Mo. banc 1998). The court went on to explain, however, that though that privacy right is “fundamental,” there “can be instances in which some discovery is appropriate.” Id. The court further recognized, though, that even in these instances protective orders are an appropriate contingency to production so as to “preserve the privacy of the parties.” Id. at 611, citing State ex rel. Tally v. Grimm, 722 S.W.2d 604, 605 (Mo. 1987) which “ordered that certain employment records were discoverable, but recommended an *in camera* examination to limit disclosure to those records that were relevant ***and the use of a protective order to minimize the invasion of privacy.***” (emphasis added). Notably lacking from Plaintiff’s discussion of these cases is any reference to the repeated preference that Missouri trial courts employ protective orders in this context.

And this is all the Archdiocese seeks. It does not argue that, as to Ross, the personnel file has no relevance. It does not seek to unconditionally withhold those documents or information. Indeed, it has from the outset offered to produce the requested file. But in doing so it seeks to



balance that production with preserving the “fundamental” privacy right repeatedly recognized by the Missouri Supreme Court, and in the manner suggested by that court. Moreover, to the extent the personnel file contains privileged, confidential or sensitive information regarding non-parties, that content should be redacted.

B. In Application, Missouri Trial Courts Adhere To This Approach.

Plaintiff’s counsel is well aware that the Missouri trial courts considering the issue in the context of priest personnel files, have uniformly conditioned production on the entry of a protective order. This awareness stems from counsel’s status as attorney of record in the following cases in which Missouri trial courts entered such orders:

- John Doe AP v. Father Thomas Cooper, et al., Cause No. 052-07056, Circuit Court of the City of St. Louis, Protective Order signed by the Honorable Donald L. McCullin on August 19, 2008;
- Mary SN Doe v. Roman Catholic Archdiocese of St. Louis, et al., Cause No. 052-01458, Circuit Court of the City of St. Louis, Protective Order signed by the Honorable David L. Dowd on January 30, 2008;
- The Clergy 1 Litigation Cases, Cause No. 07SL-CC00012, Circuit Court of St. Louis County, Protective Order signed by the Honorable Bernhardt C. Drumm, Jr. on October 14, 2007;
- Timothy P. Dempsey, et al. v. Father Robert Johnston, et al., Cause No. 042-09280, Circuit Court of the City of St. Louis, Protective Order signed by Judge McCullin on July 12, 2007; and
- Father Alexander R. Anderson v. Arthur P. Andreas, et al., Cause No. 02CC-002804, Circuit Court of St. Louis County, Protective Order signed by the Honorable Barbara W. Wallace on November 24, 2003.

The trial courts in Missouri have consistently adhered to Delmar Garden and Tally. Plaintiff cites no Missouri authority to the contrary.

C. Federal Case Law Is Inapposite And Contrary To Plaintiff's Argument In Any Event.

Because Missouri law and practice are contrary to Plaintiff's argument, she looks to federal law for support. As a threshold matter, unlike Delmar Gardens, Tally and Crowden, the federal authority on which Plaintiff relies has no precedential value and cannot supersede Missouri law. But regardless, Plaintiff's federal argument is a general one – federal courts recognize that documents produced in discovery are “presumptively public documents.” While Plaintiff is forced to acknowledge that no Missouri case supports this premise (Pltff. Mtn. at 6), it has no application here in any event. Federal authority is rife with case law requiring the entry of protective orders to preserve the privacy interests attendant to personnel files. In other words, while some (but not all) federal courts generally hold that discovery materials are “public records,” exceptions are routinely made when the records are subject to a privacy interest or other confidentiality consideration.

Undersigned counsel's research uncovered literally hundreds of federal cases to that effect, too numerous – and too unnecessary – to list here. However, limiting the results of that search even to only some of the Circuit Court decisions and the most recent District Court cases, the breadth of depth of authority is telling:

- Knoll v. American Tel. & Tel. Co., 176 F.3d 359, 365 (6<sup>th</sup> 1999) (upholding grant of protective order regarding employee personnel files);
- Kirkpatrick v. Raleigh County Bd. of Educ., 78 F.3d 579 \*2 (4<sup>th</sup> Cir. 1996) (“We also find that the court properly balanced privacy interests against [plaintiff's] need for the material in granting the Defendant's protective order as to this [personnel file] information.”);
- Sanchez v. City of Santa Ana, 936 F.2d 1027, 1033 (9<sup>th</sup> Cir. 1990) (“Defendants correctly argue that the protective order was proper because of the confidential nature of the requested [personnel] files.”);

- Duling v. Gristede's Operating Corp., 266 F.R.D. 66, 72-73 (S.D.N.Y. 2010) (recognizing that “courts have generally characterized personnel files as confidential and found it appropriate to enter protective orders governing their use in litigation because of the inherent potential for harm or embarrassment if the information they contain is revealed” and collecting like cases);
- Christenson v. Quinn, 2013 WL 1702040 \*8-9 (D.S.D. April 18, 2013) (issuing protective order to preserve confidentiality of personnel files);
- Stewart v. City of Prairie Village, Kan., 2013 WL 1498669 (D. Kan. April 11, 2013) (issuing protective order to preserve confidentiality of personnel files);
- Rein v. Quincy Public School Dist. No. 172, 2013 WL 165066 \*2-3 (C.D. Ill. January 15, 2013) (issuing protective order to preserve confidentiality of personnel file);
- Gordon v. Countryside Nursing and Rehabilitation Center, 2012 WL 2905607 (N.D. Ill. July 16, 2012) (issuing protective order to preserve confidentiality of personnel files); and
- Dzanis v. JPMorgan Chase & Co., 2011 WL 5979650 \*6 (S.D.N.Y. November 30, 2011) (denying motion to compel as to certain personnel records, granting motion as to others but subject to protective order).

As noted above, this is hardly a comprehensive list. Plaintiff's invocation of federal law changes nothing. It is not controlling authority here and, even if it were, illustrates the virtual universal recognition of the confidential nature of personnel records and the need to employ protective orders to preserve that status.

D. Plaintiff, Her Counsel And Her Counsel's Affiliates Have Taken Steps To Publicize Ross's Status And Alleged Involvement.

Without citation to any Missouri authority, Plaintiff dedicates a significant portion of her motion to the notion that public disclosure of the Ross personnel file is “good public policy” because naming him and releasing his information will facilitate the “confrontation” of abuse, allow “other victims of Ross” to heal, and “destroy the secrecy” around Ross and the Archdiocese. (Pltff. Mtn at 9-13.) Plaintiff's own litigation and public relations conduct to date, however, moots these arguments.

Even at this early stage, it cannot be said that this lawsuit or the circumstances underlying it have been shrouded in secrecy. Quite literally from its inception, Plaintiff, counsel and their affiliates have litigated this case in the press. As the attached exhibits show, Plaintiff and her counsel hosted a press conference on the sidewalk in front of the Archdiocese's headquarters in October of 2011 when the lawsuit was filed. (See Exhibit A.) Between press releases, articles, and statements, Plaintiff and counsel revealed the name of Ross, his history which includes a criminal conviction, and their allegations regarding the Archdiocese's conduct. (See Exhibits A, B and C.) These disclosures even included a partially obstructed photograph of the Plaintiff herself, provided "courtesy of Ken Chackes" – Plaintiff's counsel. (See Exhibit B.)

Plaintiff aggressively pursued public awareness regarding both Ross and the Archdiocese, and achieved it. As such, when weighed against the "fundamental" privacy right in personnel records recognized by the Missouri Supreme Court, the balance Plaintiff claims to seek has already been struck.

E. The Ross Personnel File Contains Medical Records Protected By HIPAA

Plaintiff's argument that she is entitled to Ross' medical records absent authorization or court order are without merit. Federal law expressly safeguards Ross's health information from public disclosure. The protection of the privacy of patients' medical records is a primary objective of the federal Health Insurance Portability and Accountability Act ("HIPAA") of 1996. Under HIPAA, which preempts less stringent state laws (see 45 C.F.R. § 164.502(f)), a patient or his representative has extensive control over the disclosure of a patient's health information. HIPAA prohibits the disclosure of health information absent: (a) a court order; (b) written permission from the patient or his representative; or (c) proof that the patient or representative has been informed of the request and given an opportunity to object. See §§ 164.502(g)(1);



164.512(e)(1). Plaintiff has not satisfied any of these mandatory prerequisites. This aspect of Plaintiff's motion should be denied. The Archdiocese does not contest the potential relevance of some of Ross's medical records, but HIPAA compliance is not optional.

**III. Plaintiff's Request For All Documents And Information Regarding "Each And Every Allegation Of Sexual Contact" Dating Back To The 1970's Is Overbroad and Misapplies The Concept Of "Habit Evidence."**

**A. Plaintiff's Request Is Overbroad, Unduly Burdensome, Harassing And Made For An Improper Purpose.**

Plaintiff seeks information and documents regarding "each and every *allegation* of sexual contact with a minor made against any priest and/or employee serving within the Archdiocese" dating back to the 1970's. The presumption being that mere allegations regarding others are facts, or in some way relevant to the validity of Plaintiff's own claim – which they are not. Based on this false presumption, Plaintiff claims that allegations regarding others are relevant to her ability to establish her intentional tort claim. Not surprisingly however, she cites no authority in favor of this conclusory proposition, nor does any exist. The overbroad, burdensome, and harassing nature of the request is patent.

This is precisely the type of "fishing expedition" that Missouri courts reject. As the Missouri Supreme Court stated in Delmar Gardens: "The discovery process was not designed to be a scorched earth battlefield upon which the rights of the litigants and the efficiency of the justice system should be sacrificed to mindless overzealous representation of plaintiffs and defendants." Delmar Gardens, 239 S.W.3d at 612.

Plaintiff's claim is based on the facts and circumstances surrounding her alleged abuse, not the mere allegations against others dating back nearly forty (40) years. Plaintiff faces significant hurdles in establishing the merits and credibility of her claim. As such, she seeks to make her case not about her, but about four (4) decades of allegations from others, regarding

others. It is smoke and mirrors. The Plaintiff's claim is *her* claim. This is one of two transparent reasons Plaintiff pursues this request.

The second reason is to continue to litigate this matter through the press in an effort to harass the Archdiocese and to taint the jury pool with sweeping allegations regarding not only Ross, but any allegation regarding any employee of the Archdiocese for decades. As noted above, Plaintiff and her counsel have publicized this case from the outset. And one need look no further than the language in the motion to compel itself to discern the forward looking intent:

- “with the publicity accompanying this case”;
- “Ross’s personnel file will be a resource for the public”;
- “the sight of an abuser’s name in the media”;
- “seeing the name or picture of the abuser in the media”;
- “the ‘electric light’ of press attention.”

The Court should not facilitate Plaintiff's counsel's efforts to further contaminate the jury pool through the media with irrelevant and inflammatory accusations. The outcome of this case will be determined by its own facts and the application of the law to those facts.

**B. Plaintiff Misapplies “Habit” Evidence.**

Because the law generally rejects the scope of Plaintiff's sweeping requests, she attempts to pursue a “habit” evidence exception. This effort fails to comprehend what constitutes such evidence. Moreover, it is an effort to repackage patently inadmissible “prior bad acts” evidence as “habit.”

Though Missouri courts have not formally adopted the Federal Rules of Evidence, they do look to them for guidance. This includes analyzing what constitutes “habit” evidence, which is set forth in FRE 406. See Hawkins v. Whittenberg, 587 S.W.2d 358, 364 n.2 (Mo. Ct. App.

1979). One precept of “habit” evidence adopted by Missouri courts, omitted by Plaintiff despite citing the case holding it, is that “[t]he admissibility of habit evidence should be restricted and kept within narrow limits.” Zempel v. Slater, 182 S.W.3d 609, 617-618 (Mo. Ct. App. 2005). FRE 406, the commentary to it, and the case law interpreting it illuminate the nature of these limits.<sup>1</sup>

The very recent case of Houchins v. Jefferson County Board of Ed., 2013 WL 811723 (E.D. Tenn. March 5, 2013), is instructive and provides a summary of the analysis to a similar situation. There, plaintiff – an employee bringing a sexual harassment claim against her employer arising out of the alleged conduct of a supervisor – sought to introduce evidence of up to five (5) prior instances of sexual harassment to establish:

[Supervisor’s] “habit and routine practice of inappropriately sexually touching and making sexual remarks to female employees,” as well as [employer’s] “habit and routine practice of failing to control [supervisor] or take prompt corrective action in response to stop him.”

Id. at \*1. The court held that the “evidence is not the sort contemplated by Rule 406” and instead rejected it as inadmissible “prior bad act” testimony under FRE 404(b). Id. The court further explained that to be admissible, “an organization’s routine practice must be so automatic, so repetitive, that it might approach evidence of habit; *it must be done unwittingly.*” Id. at \*2 (emphasis added). That closing language is important, because “habit” evidence must be that which is automatic, not that which involves conscious measured thought and decision making. See Nobles v. U.S., 2012 WL 1598075 \*2 (S.D. Cal. May 7, 2012) (habit evidence must be “reflexive or semi-automatic *as opposed to volitional*”) (emphasis added); Weil v. Seltzer, 873 F.2d 1453, 1460 (C.A.D.C. 1989) (“[H]abit refers to the type of non-volitional activity that

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<sup>1</sup> As noted in Zempel, Missouri courts have only addressed the admissibility of habit evidence on “rare occasions.” Zempel, 182 S.W.3d at 617.

occurs with invariable regularity. It is the non-volitional character of habit evidence that makes it probative.”).

Here, Plaintiff similarly seeks evidence regarding the Archdiocese’s alleged prior conduct with regard to its supervision and control of priests and employees other than Ross. But this is not habit evidence. It is not “reflexive” or “non-volitional.”

It is, instead, Plaintiff’s attempt to back-door evidence of individualized “prior bad acts” to attack the character of the Archdiocese. Evidence of this nature is highly prejudicial and universally rejected as inadmissible. Because of this, and because Plaintiff’s argument is not an uncommon one, the official comment to FRE 406 specifically warns against this tactic:

Courts have generally proceeded cautiously in permitting the admission of a pattern of conduct as habit, “because it necessarily engenders the very real possibility that such evidence will be used to establish a party’s propensity to act in conformity with its general character, thereby thwarting Rule 404’s prohibition against the use of character evidence except for narrowly prescribed purposes.” Simplex, Inc. v. Diversified Energy Sys., 847 F.2d 1290, 1293 (7<sup>th</sup> Cir. 1988). That is, courts are concerned that the rule admitting evidence as habit will swallow the rule that excludes character evidence . . .

Plaintiff does not seek information regarding a non-volitional, reflexive “habit.” Plaintiff seeks information regarding particularized instances of alleged decision making applied to specific instances and occurrences. And in Plaintiff’s own words, Plaintiff intends to “mak[e] public information about an organization that covered up and concealed child sex offenders for decades.” It is an attempt to inject allegedly “bad act” evidence intended to question the character of the Archdiocese and, as such, it is inadmissible.

### **CONCLUSION**

For each of the foregoing reasons, the Court should: (a) deny Plaintiff’s motion regarding a privilege log as moot; (b) deny Plaintiff’s motion with regard to the production of Ross’s

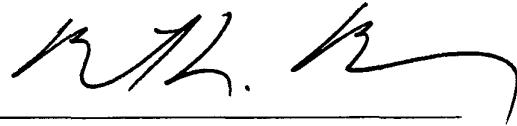


personnel file absent a protective order and HIPAA compliant order or authorization; and (c) deny Plaintiff's motion to the extent it requests all documents and information regarding "each and every allegation of sexual contact with a minor made against any priest and/or employee serving within the Archdiocese."

Dated: May 6, 2013

GREENSFELDER, HEMKER & GALE, P.C.

By



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**CERTIFICATE OF SERVICE**

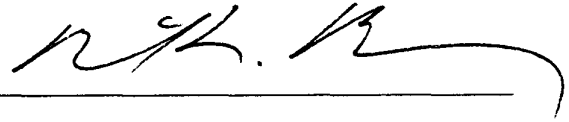
The undersigned hereby certifies that a true and accurate copy of the foregoing document was served on the following counsel of record, electronically and via U.S. Regular Mail, with postage prepaid, this 6th day of May, 2013:

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FILED  
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22<sup>ND</sup> JUDICIAL CIRCUIT  
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MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(CITY OF ST. LOUIS)

Jane Doe 92

VS

Archdiocese of St Louis, et al

CASE NO. 1122-CC10165 DIVISION

18

May 13, 2013

ORDER/JUDGMENT/MEMORANDUM

Plaintiff's Motion to Compel argued and submitted, subject to the following:

1. Defendant will file an amended privilege log and a brief regarding its asserted privileges by May 24, 2013.

2. Plaintiff will file a brief in response to defendant's brief regarding privileges by June 28, 2013.

3. Defendant's request for a protective is granted with respect to the personnel file of Joseph Ross. The parties will attempt to agree on the terms of said order.

4. The Court grants <sup>in part</sup> plaintiff's motion to compel discovery of complaints of sexual abuse by others. Defendants shall provide, for the period 1983-2003, (a) the date of the complaint or allegation, (b) the nature of the complaint, (c) identity of the complainant, (d) to whom the complaint was made, (e) identity of the alleged abuser, and (f) the

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(CITY OF ST. LOUIS)

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ORDER/JUDGMENT/MEMORANDUM

page 2

outcome of the complaint. If the complainant expressly requested confidentiality, defendant may so state and withhold the person's name. The names of the other complainants shall be subject to a protective order. Defendants shall provide the information in this paragraph within 60 days.

Defendants' Motion to Compel is deferred pending the parties' further attempt to resolve the terms of a protective order and other issues.

Archdiocese - R. H. 12 52432

P's atty - K. M. 27534

So Ordered:

12/1/12, RSR



IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI

10 JUL 28 PM 4:02

JANE DOE 92,

Plaintiff,

vs.

ARCHDIOCESE OF ST. LOUIS, et al.

Defendant.

Case No. 1122-CC10165

Division 1

**ENTERED**

**JUL 10 2013**

**ES**

**MOTION FOR PARTIAL RECONSIDERATION OF ORDER TO COMPEL**

Defendants the Archdiocese of St. Louis and Archbishop Robert J. Carlson (collectively the "Archdiocese") hereby file this Motion for Partial Reconsideration of the Court's May 13, 2013 Order (the "Order").

**INTRODUCTION**

In response to the Parties' briefing on Plaintiff's Motion to Compel certain types of discovery, this Court ordered that the Archdiocese produce the following information regarding allegations of sexual abuse involving the Archdiocese from 1983-2003: (a) date of the allegation; (b) nature of the allegation; (c) identity of complainant; (d) to whom the allegation was made; (e) identity of the alleged abuser; and (f) the outcome. The Archdiocese moves this Court to reconsider that Order due to its overbreadth, the burdens imposed, and the significant invasion of the privacy rights of third parties that would flow from the Archdiocese's compliance.

The Archdiocese urges the Court to reduce the temporal scope of the order and to limit the discovery of abuse allegations to those: (a) occurring prior to Plaintiff's alleged abuse last occurring in 2001; (b) complaints involving only alleged abuse against a minor by a priest,<sup>1</sup> and

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<sup>1</sup> Herein, "priest" or "priests" refers at all times to priests incardinated in the Archdiocese of St. Louis.

(c) complaints that were either brought forward as a result of civil litigation or criminal prosecution resulting in a guilty plea, *nollo contendere* or Alford plea, or settlement and where the Archdiocese subsequently placed the priest in a role involving contact with minors.

Most importantly, the Archdiocese asks the Court to reconsider its ruling with regard to the need for a protective order. Regardless how, or if, the Court modifies the scope of the Order, a protective order is needed to preserve the privacy rights of third parties with no voice here. This includes not only the accusers and the accused, but their families as well. Absent such an order, Plaintiff's counsel has made it no secret that he intends to publish all of this information – regarding mere *allegations* – for public consumption. Counsel does not even attempt to claim a litigation purpose for this tactic, and there is not one. A protective order would still provide Plaintiff with the information she seeks for actual litigation purposes, and would visit no prejudice upon her. The absence of a protective order, however, will visit immense prejudice and harm on unknowing third parties in a most public violation with no chance to be heard. Once that bell rings, neither the Parties nor this Court can unring it.

### **AGRUMENT**

#### **I. Complaints of Abuse Occurring After Plaintiff's Last Claim Of Abuse In 2001 Are Irrelevant And Not Discoverable.**

Plaintiff's last claimed incident of abuse occurred in 2001. The Court's Order currently compels the Archdiocese to produce information regarding unrelated allegations of sexual abuse from 1983-2003, which includes two (2) years of complaints occurring *after* Plaintiff's allegations. This time frame was written into the Order because, following the hearing, counsel for the Parties could not agree on an interpretation of the Court's intent as expressed during argument. This timeframe was written into the Order as a temporary solution to that confusion,

with an understanding between counsel that the matter would be revisited for clarification. That is in part the purpose of this motion.

It is Defendants' counsel's understanding that the Court ordered discovery on this information for the twenty (20) years *prior* to the alleged period of abuse, but not after. This is logical given that the Court's justification for the Order was that Plaintiff is entitled to this discovery on the issue of punitive damages. Post-event allegations and incidents have no bearing on that issue.

Any complaints of sexual abuse occurring in 2002 and 2003 are irrelevant to the punitive damages notice issue of what the Archdiocese knew, or even could have known, before and during 1997 to 2001. The factual bases underlying post-event allegations of abuse had not yet occurred. Allegations in 2002 and 2003 fail to show that the Archdiocese had notice of sexual abuse incidents within its organization at the time of Plaintiff's alleged abuse and are wholly irrelevant and inadmissible.

Nor are allegations from 2002 and 2003 relevant to Plaintiff's punitive damages claims. For punitive damages, evidence of post-claim conduct is admissible only if there is a direct factual connection to the "liability-creating acts." State ex rel. Ford Motor Co. v. Messina, 71 S.W.3d 602, 608 (Mo. 2002). While that would apply to post-claim conduct regarding Joseph Ross himself and the Archdiocese's response to Plaintiff's allegations, it does not at all apply to unrelated or unsubstantiated allegations made by others, regarding others. Unrelated sexual abuse complaints occurring after Plaintiff was allegedly abused are not relevant to whether the Archdiocese acted culpably from 1997 to 2001, when Plaintiff was allegedly being abused.

The Archdiocese requests that the Court limit production of sexual abuse allegation information to those complaints occurring prior to Plaintiff's claimed abuse for some period of time before 2001.<sup>2</sup>

**II. Only Allegations Of Sexual Abuse That Are Substantially Similar To Plaintiff's Allegations Are Relevant And Discoverable.**

The Order requires the Archdiocese to disclose certain information regarding *all* allegations – whether confirmed or not – of sexual abuse against *all* Archdiocesan employees, not just priests. The Archdiocese should not be compelled to produce information regarding mere allegations with little or no factual similarities to Plaintiff's allegations in this case.

In determining relevance of evidence of prior incidents, the similarity of the two occurrences is significant. Govreau v. Nu-Way Concrete Forms, Inc., 73 S.W.3d 737, 742 (Mo. Ct. App. 2002). Specifically, in this context, courts look to the identity of the complainant and alleged abuser when considering similarity and relevance of discovery of prior abuse complaints or information. Doe v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, No. 1:09-cv-00351-BLW, 2012 WL 2061417, at \*5 (D. Idaho June 7, 2012) (“Even the most cursory review of the complaint shows that this case is about child sex abuse within scouting. Discovery will be limited accordingly.”).

Here, the basis of Plaintiff's allegations is sexual abuse by a priest against a minor and the Archdiocese's supervision of *priests* specifically. Her allegations in no way involve other Archdiocesan employees, such as administrative personnel or school employees, and all of her allegations involve incidents occurring when she was a minor. Therefore, at a minimum, only incidents involving complaints of sexual abuse of a minor by a priest are potentially relevant.

<sup>2</sup> As discussed below, the Archdiocese requests reconsideration of the twenty (20) year scope of the Order.



See E.E.O.C. v. New Prime, Inc., 02-3072-CV-S-3-ECF, 2002 WL 1377789, at \*3 (W.D. Mo. May 28, 2002) (finding request for production of personnel files in a sexual harassment case sufficiently limited because it sought information only of “similarly situated” employees and “not . . . information regarding all female employees or other company positions”). The Court should limit the Archdiocese’s production to only those allegations. This limitation will not prejudice Plaintiff or hinder the purpose of the Court’s Order. And it will further alleviate some of the significant burden of complying with the Order as written.

Further, the Order currently encompasses mere allegations. Allegations, without more, are inherently unreliable and lack credibility. Scherrer v. City of Bella Villa, 4:07-CV-306(CEJ), 2009 WL 440484, at \*5, n.5 (E.D. Mo. Feb. 20, 2009) (“[T]he Court does not believe that unproven allegations . . . are sufficient to show a pattern of transgressions on the part of the City of Bella Villa.”); State v. Goodliffe, 578 P.2d 1288, 1290 (Utah 1978) (finding that “[b]are, unproven allegations or ‘complaints’ of prior incidents of similar conduct have no relevancy” to a party’s truthfulness or veracity and would “only have caused the jury to speculate about defendant’s propensities to commit such crimes and confuse the issues.”). The Archdiocese requests that the Order be modified to apply only to either confirmed instances of abuse, or allegations that led to litigation, settlement, or other informal agreed resolution. Such a modification protects innocent accused and their families. It likewise protects the privacy rights of accusers from being disclosed as ones who made an unsubstantiated allegation of abuse and who chose to keep those allegations private rather than pursuing public litigation.

Thus, the Court’s Order requiring production of certain identifying information of sexual abuse complaints should be limited to those abuse allegations involving: (a) a **minor** complainant (or the representative of a minor); (b) an alleged **priest** abuser, and (c) that were either brought

forward as a result of civil litigation or criminal prosecution resulting in a guilty plea, *nollo contendere* or Alford plea, or settlement<sup>3</sup> and where the Archdiocese subsequently placed the priest in a role involving contact with minors.

**III. The Court's Order Requiring Disclosure Of All Allegations Is Unduly Burdensome Due To Breadth And Scope Of Time.**

The above requested modifications, if granted, will help address this issue considerably with regard to breadth. A twenty (20) year scope of time, however, also places a tremendous burden on the Archdiocese. Consider that the Archdiocese covers ten (10) counties, plus the City of St. Louis, and contains 187 parishes. Within that broad range are over 220 employing units employing nearly 5,000 individuals. And that is just the current data, let alone the numbers when expanded to a twenty (20) year time period. (See **Exhibit A**, listing the current employing units and number of employees.) The Order is not limited to only priests and parishes, and goes to all agents and employees of the Archdiocese, and therefore goes to all of these units and those employed within them over a twenty (20) year period. There is no common database for all potential complaints possibly made at every employing unit. Every unit will need to be individually searched and with interviews of current and former employees during the time span. Moreover, due to the scope of time stretching back to the early 1980s, this is not simply a matter of searching computer records. The burden to respond in such a comprehensive fashion is overwhelming, particularly when balanced with the questionable or limited relevance of the information sought under the current scope of the Order. See Scottrade, Inc. v. The St. Paul

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<sup>3</sup> Using this criteria also relieves concerns regarding application of the priest/penitent privilege. Parishioners contacting the Archdiocese frequently do so on the presumption and belief that these sensitive communications will remain privileged and confidential. This is a subjective belief. Limiting the Order to situations in which the complainant pursued criminal charges, civil litigation or obtained a settlement objectively ensures that forced disclosure does not violate the privilege.

Mercury Ins. Co., 4:09CV1855SNLJ, 2011 WL 572455, at \*5 (E.D. Mo. Feb. 15, 2011); E.E.O.C. v. New Prime, Inc., 02-3072-CV-S-3-ECF, 2002 WL 1377789, at \*3 (W.D. Mo. May 28, 2002).

Narrowing the scope of the Order both as to factual similarity and scope of time will still provide Plaintiff with the information necessary to attempt to support her punitive damages claim based on notice, while balancing the burden imposed on the Archdiocese. The Archdiocese requests that the Court modify the Order to reflect a ten (10) year scope of time.

**IV. A Protective Order Is Required For Any Information Disclosed Pursuant To The Court's Order.**

Regardless of what modifications are made to the scope of the Order, what is disclosed should be subject to a protective order. Plaintiff's counsel openly admits that he intends to publish all of the information in the media and on the internet regardless of the legitimacy of the allegations involved, despite there being no legitimate litigation reason to do so.<sup>4</sup> The privacy right implications to third parties are clear, and risk severe public humiliation to both accusers and accused. Under the current Order, this invasion of privacy would be against their will, without their knowledge, and without an opportunity to even be heard. This is exactly the scenario contemplated by Missouri law regarding protective orders.<sup>5</sup>

<sup>4</sup> If Plaintiff's counsel is permitted to employ this strategy to deliberately contaminate the jury pool, the Archdiocese may be compelled to move for a change of venue under Rule 51.04(a). There is no legitimate litigation purpose for Plaintiff's tactic, and this Court should not permit it.

<sup>5</sup> Plaintiff and her counsel are aware of the sensitive nature of the subject matter, as Plaintiff herself advances this case as a Jane Doe. Plaintiff's own moving papers regarding her Jane Doe status state "Plaintiff believes that if she is required to use her name in the prosecution of this lawsuit, *she and her family will be subject to public ridicule and humiliation.*" (emphasis added) So it would be with an accused as well. Particularly an unrepresented third party who should be entitled to preserve rights to due process.

Even where discovery of information is ordered, Missouri Rule of Civil Procedure 56.01(c) provides that the court may enter a protective order where “justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense.” Moreover, “because discovery may seriously implicate the privacy interests of litigants and third parties, trial courts have implicit power to use protective orders to preserve confidentiality and protect against public disclosure.” State ex rel. Missouri Ethics Comm’n v. Nichols, 978 S.W.2d 770, 774 (Mo. Ct. App. 1998).

Production of information regarding unrelated child abuse allegations raises myriad troubling third party privacy and confidentiality risks – risks easily avoided through use a protective order that will not prejudice Plaintiff in the least. First, the identity of the complainant raises these concerns. Many complainants here may have made an allegation of sexual abuse, but may no longer wish to be associated with that claim. Or who at least do not want to have that association published to the world many years later against their will and without even the opportunity to be heard. Further, many complainants communicating with their religious leaders have heightened expectations of privacy, expectations recognized and protected by the priest-penitent privilege.<sup>6</sup> Eckmann v. Bd. of Educ. of Hawthorn Sch. Dist. No. 17, 106 F.R.D. 70, 73 (E.D. Mo. 1985) (finding a nun serving as a spiritual advisor was entitled to the priest-penitent privilege).

The identity of the person accused is also subject to third-party privacy restrictions. Allegations of child sexual abuse are serious, and an individual accused of such conduct is

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<sup>6</sup> The Parties by agreement included in the Order that the identity of accusers would be subject to a protective order. This protection should go to all non-party individuals. Clarification on this aspect of the Order is required, however, because the Court rejected the Archdiocese’s argument on that point during oral argument to all accusers except those with a written record of a confidentiality request.



subject to severe societal scorn and personal strife, regardless of the legitimacy of the allegation. Public disclosure of the mere allegation is a permanent humiliation for both the accused and their families. And because allegations are often unsubstantiated, the accused may face this embarrassment and oppression without deserving it. As the Supreme Court of Washington stated in regard to public school teachers similarly accused: “The mere fact of the allegation of sexual misconduct toward a minor may hold the teacher up to hatred and ridicule in the community, without any evidence that such misconduct ever occurred.” Bellevue John Does 1-11 v. Bellevue Sch. Dist. #405, 164 Wash. 2d 199, 215, 189 P.3d 139, 148 (2008) (holding that the identity of a public school teacher accused of unsubstantiated sexual abuse of children is exempt from public disclosure laws because such disclosure would violate the teacher’s right to privacy). This embarrassment, harassment, and annoyance, both for the accuser and the accused, is precisely what Rule 56.01(c) is designed to prevent.

Due to these privacy concerns, courts faced with discovery of sexual abuse complaints routinely and rightly order production subject to a protective order. See e.g., Doe v. Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, No. 1:09-cv-00351-BLW, 2012 WL 2061417, at \*5 (D. Idaho June 7, 2012) (ordering production of documents subject to a protective order that, at a minimum, redacted the names of (1) the alleged victim; (2) the alleged perpetrator; and (3) the people who reported the abuse); Doe 6 v. Boy Scouts of Am., CIV.A. 09C-07085 CLS, 2013 WL 1092146 (Del. Super. Jan. 28, 2013) (ordering production pursuant to a joint-confidentiality agreement with names of the reporting individual, perpetrators, and the victims redacted).

Even subject to the protective order, the identities of the accuser and accused have no purpose in or relevance to this litigation. The existence of prior complaints and the date of

occurrence constitute sufficient information for Plaintiff's only possible litigation purpose for this information, which is to show the Archdiocese allegedly concealed and mishandled matters involving priests accused of sexual abuse. Because the identities of the accuser and accused in prior complaints are not relevant, such information should be redacted even if subject to a protective order. State ex rel. Wilson v. Davis, 979 S.W.2d 253, 257 (Mo. Ct. App. 1998) ("Portions of the requested documents that are not relevant should be redacted through the trial court's supervision."). Redaction is further mandated by the need to protect the privacy interests of those not material to this litigation, such as the accuser and accused. State ex rel. Boswell v. Curtis, 334 S.W.2d 757, 763-64 (Mo. Ct. App. 1960) (stating that the court has the "discretion [to] hedge the examination of the document with such reasonable restrictions as are possible and practicable in order to protect the privacy in respect to matters not material to the case.").

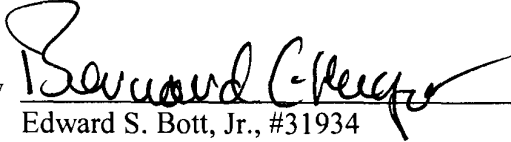
If the Archdiocese is compelled to produce any information related to prior sexual abuse allegations, regardless of scope, the Court should order such production subject to a protective order to protect and preserve the privacy and confidentiality of third parties.

### CONCLUSION

The Archdiocese respectfully requests that the Court reconsider its Order compelling production of information regarding sexual abuse allegations and deny the production of such information, or in the alternative, order such information produced as follows: (1) produce complaints only from 1991 to 2001; (2) produce only complaints involving (i) a complaint of abuse of a *minor*; (ii) an alleged abuser who is a *priest*, and (iii) complaints that were either brought forward as a result of civil litigation or criminal prosecution resulting in a guilty plea, *nollo contendere* or Alfordd plea, or settlement and where the Archdiocese subsequently placed

the priest in a role involving contact with minors; and (3) produce all of the aforementioned information with names redacted and subject to a protective order.

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#### **CERTIFICATE OF SERVICE**

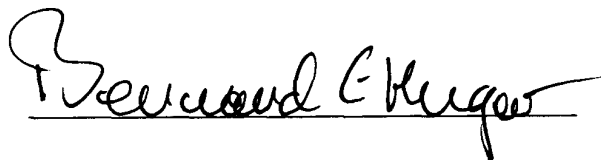
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# **EXHIBIT A**

**EMPLOYING UNITS OF THE  
ARCHDIOCESE OF ST. LOUIS  
JUNE 28, 2013**

PROCESS LEVEL	Parish/Agency/School NAME	Enrolled UHC	Eligible to be Enrolled	Total Employees
100	Administration	101	25	126
101	Discretionary Resources	2	0	2
115	PMBS	2	0	2
125	Annual Catholic Appeal	1	4	5
140	St. Louis Review	6	2	8
170	Self-Funded Employee Benefit P	3	0	3
180	Office of Risk Management	1	0	1
200	Catholic Education Office	27	3	30
210	Bishop DuBourg HS	48	14	62
215	CRCP	32	7	39
220	John F Kennedy HS	27	14	41
225	Trinity Catholic HS	35	5	40
230	Rosati-Kain HS	34	9	43
235	St Mary HS	33	12	45
240	St Pius X HS	30	4	34
245	Duchesne HS	39	19	58
250	St Dominic HS	55	13	68
255	St Francis Borgia HS	44	20	64
260	Dept of Special Education	18	10	28
265	St Mary's Special School	18	23	41
280	Today and Tomorrow	5	0	5
300	Kenrick-Glennon Seminary	30	14	44
310	Catholic Cemeteries	42	1	43
320	Office of Vocations	1	2	3
335	Mission Office	5	0	5
340	Respect Life Apostolate	2	2	4
360	Offices Related to Priests	1	0	1
365	Charismatic Renewal	1	1	2
370	St Charles Lwanga	1	1	2
375	Apostolic Services	6	1	7
380	Newman Center - UMSL	1	1	2
381	Newman Center - Wash U	6	4	10
382	Newman House - Comm College	1	0	1
390	Permanent Diaconate	2	0	2
399	Paul VI Institute	6	1	7
415	Father Dempsey's Charities	4	4	8
430	Catholic Youth Apostolate	10	7	17
435	Hispanic Ministry	1	0	1
436	Catholic Charities of St Louis	15	6	21
441	Catholic Charities Comm Svcs	44	8	52
447	Good Shepherd Child/Fam Servic	47	7	54



PROCESS LEVEL	Parish/Agency/School NAME	Enrolled UHC	Eligible to be Enrolled	Total Employees
450	Saint Patrick Center	92	30	122
466	Child Center~Marygrove	112	39	151
468	Catholic Family Services	43	5	48
470	Queen of Peace Center	55	7	62
471	Peace for Kids	5	12	17
472	Saint Martha's Hall	10	3	13
475	Cardinal Ritter Senior Svcs	15	9	24
476	Residential Services Corp	23	7	30
479	Holy Angels I	5	0	5
481	Pope John Paul II Apartments	4	1	5
483	Holy Angels II	1	0	1
487	Saint William Apartments	2	1	3
488	Saint Patrick Apartments	4	1	5
489	Saint Patrick II Apartments	2	0	2
490	Saint Agnes Apartments	4	1	5
491	Saint William II Apartments	2	0	2
492	Saint John Neumann Apartments	4	1	5
493	Cardinal Carberry Sr LivingCtr	30	7	37
494	Mother of Perpetual Help	21	12	33
496	Mary Queen & Mother Center	120	59	179
498	Our Lady of Life Apartments	7	14	21
499	Regina Cleri	15	4	19
975	Archdiocese Elementary Schools	32	20	52
977	Holy Infant & St Joe Assoc LP	5	2	7
7101	Cathedral Basilica of St Louis	10	0	10
7102	Saints Teresa and Bridget	2	0	2
7104	Epiphany of Our Lord	3	1	4
7114	Most Holy Trinity	1	0	1
7116	Our Lady of the Holy Cross	1	0	1
7123	Our Lady of Sorrows	3	4	7
7127	Saint Agatha	0	1	1
7130	Saint Alphonsus Liguori (Rock)	2	3	5
7131	Saint Ambrose	18	4	22
7133	Saint Anthony of Padua	0	2	2
7134	Saint Augustine	0	2	2
7140	Saint Cecilia	4	0	4
7143	Saint Cronan	1	1	2
7145	Saint Elizabeth	2	2	4
7148	Saint Francis Xavier College C	10	2	12
7149	Saint Gabriel the Archangel	35	12	47
7152	Saint James the Greater	13	5	18

PROCESS LEVEL	Parish/Agency/School NAME	Enrolled UHC	Eligible to be Enrolled	Total Employees
7153	Saint Joan of Arc	16	8	24
7155	Saint John Baptist-St Louis	12	5	17
7156	Saint John Nepomuk	3	0	3
7158	Saint Joseph Croatian	1	0	1
7162	Basilica of St. Louis, King of	2	1	3
7164	Saint Margaret of Scotland	26	11	37
7166	Saint Mary Magdalen-St Louis	4	0	4
7169	Saint Matthew the Apostle	2	0	2
7171	Saint Nicholas	8	4	12
7173	Saints Peter and Paul	1	2	3
7175	Saint Pius V	1	1	2
7177	Saint Roch	17	6	23
7181	Saint Stephen Protomartyr	17	7	24
7185	Saint Wenceslaus	1	1	2
7186	Saint Raphael the Archangel	16	14	30
7187	Immaculate Heart-Mary-St Louis	13	9	22
7199	Saint Alban Roe	30	20	50
7200	Incarnate Word	25	10	35
7201	Seven Holy Founders	5	0	5
7203	Holy Spirit	12	12	24
7204	Saint Mary Magdalen-Brentwood	8	11	19
7207	Ascension	36	9	45
7208	Saint Joseph - Clayton	3	1	4
7209	Our Lady of the Pillar	24	8	32
7210	Saint Monica	18	6	24
7211	Saint John Bosco	2	0	2
7212	Most Sacred Heart - Eureka	11	9	20
7213	Saint Paul - Fenton	35	5	40
7215	Sacred Heart-Florissant	21	5	26
7216	Saint Ferdinand	16	13	29
7217	Saint George	1	1	2
7220	Saint Peter - Kirkwood	34	12	46
7221	Annunziata, Church Of The	6	0	6
7222	Saint Andrew	1	0	1
7223	Saint Bernadette	1	0	1
7224	Saint Martin of Tours	3	0	3
7225	Saint Joseph - Manchester	23	18	41
7226	Immaculate Conception- Maplewood	2	1	3
7227	Assumption - Mattese	25	0	25
7228	Mary, Mother of the Church	3	1	4
7231	Saint Ann	12	10	22

PROCESS LEVEL	Parish/Agency/School NAME	Enrolled UHC	Eligible to be Enrolled	Total Employees
7232	Saint Francis of Assisi	16	19	35
7233	All Souls	2	2	4
7234	Saint Andrew Kim	1	0	1
7235	Immacolata	23	5	28
7236	Little Flower	11	5	16
7237	Saint Luke the Evangelist	2	0	2
7239	Christ, Prince of Peace	30	7	37
7241	Our Lady of the Presentation	1	0	1
7242	Saint Michael the Archangel	0	2	2
7245	Christ the King	14	13	27
7246	Our Lady of Lourdes-U City	25	10	35
7248	Sacred Heart - Valley Park	28	12	40
7250	Holy Redeemer	13	10	23
7251	Mary, Queen of Peace	36	16	52
7252	Holy Trinity Parish	15	8	23
7255	Annunciation	0	2	2
7256	Saint Clement of Rome	21	17	38
7260	Saint Catherine Laboure	23	22	45
7261	Saint Jude	2	0	2
7262	Our Lady of Providence	1	1	2
7263	Our Lady of Guadalupe	10	2	12
7265	Holy Infant	38	14	52
7270	Saint Gerard Majella	31	6	37
7272	Saint Mark	17	4	21
7273	Saint Dominic Savio	16	11	27
7274	Saint Elizabeth of Hungary	2	0	2
7275	Sainte Genevieve du Bois	14	6	20
7281	Saint Matthias	5	1	6
7282	Saint Simon the Apostle	38	5	43
7284	Saint Sabina	5	5	10
7288	Saint Angela Merici	18	7	25
7289	Saint Margaret Mary Alacoque	28	10	38
7290	Saint Martin de Porres	2	3	5
7291	Saint Clare of Assisi	29	17	46
7292	Saint Richard	10	6	16
7294	Saint Justin Martyr	11	16	27
7296	Saint Norbert	25	15	40
7298	Cure of Ars	1	2	3
7299	Saint Anselm	8	1	9
7300	Queen of All Saints	25	15	40
7301	Saint Joseph - Applecreek	0	1	1

PROCESS LEVEL	Parish/Agency/School NAME	Enrolled UHC	Eligible to be Enrolled	Total Employees
7302	Immaculate Conception	2	4	6
7307	Saint Agnes	7	8	15
7308	Saint Joseph - Bonne Terre	3	6	9
7315	Saint Ignatius	6	2	8
7316	Saint Joseph - Cottleville	47	24	71
7317	Immaculate Conceptn-Dardene	45	43	88
7319	Saint Rose of Lima	6	6	12
7320	Saint Vincent de Paul-Dutzow	7	3	10
7322	Saint Joseph - Farmington	10	5	15
7323	Our Lady	23	7	30
7324	Sacred Heart - Crystal City	8	3	11
7325	Saint Theodore	10	3	13
7326	Saint John Baptist-Gildehaus	9	6	15
7329	Saint Anthony - High Ridge	1	1	2
7330	Church of the Good Shepherd	5	2	7
7331	Our Lady, Queen of Peace	16	4	20
7332	Saint John Lateran	1	1	2
7334	Saint Joseph - Josephville	5	4	9
7335	Saint Joseph - Imperial	22	13	35
7336	Saint Gertrude	12	20	32
7339	Saint Alphonsus	2	7	9
7343	Immaculate Heart-Mary-NewMelle	4	0	4
7344	Assumption - O Fallon	26	22	48
7345	Saint Joachim	6	5	11
7346	Immaculate Conceptn-Old Monroe	8	7	15
7347	Sacred Heart - Ozora	1	0	1
7348	Saint Bridget of Kildare	8	7	15
7349	Saint Vincent de Paul-Perryvil	34	23	57
7353	Saint James	1	1	2
7356	Saint Charles Borromeo	24	12	36
7357	Saint Peter - St Charles	17	30	47
7358	Saint Clare	1	0	1
7359	Sainte Genevieve	31	19	50
7361	Saint Paul - St Paul	8	10	18
7362	All Saints-St Peters	22	15	37
7365	Saint Anthony - Sullivan	6	5	11
7367	Sacred Heart - Troy	18	10	28
7368	Immaculate Conceptn-Union	21	10	31
7369	Holy Rosary	7	5	12
7370	Saint Francis Borgia	26	11	37
7372	Saint Patrick-St Charles	26	20	46

PROCESS LEVEL	Parish/Agency/School NAME	Enrolled UHC	Eligible to be Enrolled	Total Employees
7374	Saint Joseph - Zell	3	3	6
7379	Our Lady of Lourdes-Washington	16	11	27
7380	Saint Barnabas	0	1	1
7381	Saint David	0	2	2
7382	Saint Robert Bellarmine	2	2	4
7384	Saint Cletus	18	8	26
7389	Saint Elizabeth Ann Seton	7	0	7
7390	Saints Joachim and Ann	22	14	36
7391	Saint Gianna	0	2	2
7401	Resurrection of Our Lord	1	0	1
7501	Our Lady of the Rosary	2	1	3
7502	Holy Name of Jesus	4	3	7
7503	Blessed Teresa of Calcutta	14	15	29
7504	Saint Rose Philippine Duchesne	15	5	20
8423	Our Lady of Sorrows School	7	8	15
8444	St Louis Catholic Academy	12	5	17
8485	St Frances Cabrini Academy	10	3	13
8505	Christ, Light of the Nations S	15	7	22
8540	Holy Cross Academy	37	16	53
8602	Holy Child School	13	10	23
8689	St Elizabeth Ann Seton/St Robe	10	15	25
		3349	1552	4901



**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
TWENTY-SECOND JUDICIAL  
STATE OF MISSOURI**

JANE DOE 92,	)	
	)	
Plaintiff,	)	Cause No. 1122-CC10165
	)	
vs.	)	Division 1
	)	
ARCHDIOCESE OF ST. LOUIS, a Non-	)	
Profit Corporation, ARCHBISHOP	)	
ROBERT J. CARLSON of the Archdiocese	)	
of St. Louis, and FATHER JOSEPH ROSS	)	
	)	
Defendants.	)	

**PLAINTIFF'S MOTION FOR AN ORDER OF CONTEMPT  
AND/OR SANCTIONS AGAINST DEFENDANTS**

COMES NOW Plaintiff, by and through counsel, and requests that this Court, pursuant to Supreme Court Rule 61.01, find Defendants in contempt of court and/or sanction Defendants for their failure to provide court ordered discovery in this matter.

On May 13, 2013, this Court granted, in part, Plaintiff's Motion to Compel discovery of complaints of sexual abuse by other priests and stated that:

Defendants shall provide, for the period 1983-2003, (a) the date of the complaint or allegation, (b) the nature of the complaint, (c) identity of the complainant, (d) to whom the complaint was made, (e) identity of the alleged abuser, and (f) the outcome of the complaint...Defendants shall provide the information in this paragraph within 60 days.

Accordingly, Defendants were required to disclose the information described above by July 12, 2013. They have failed to do so.

According to Supreme Court Rule 61.01,

Failure to Produce Documents, and Things or to Permit  
Inspection. --If a party fails to respond that inspection will be

permitted as requested, fails to permit inspection, or fails to produce documents and tangible things as requested under Rule 58.01, **or timely files objections thereto that are thereafter overruled** and the documents and things are not timely produced or inspection thereafter is not timely permitted, the court may, upon motion and reasonable notice to other parties, make such orders in regard to the failure as are just and among others the following:

(1) An order refusing to allow the disobedient party to support or oppose designated claims or defenses or prohibit the disobedient party from introducing designated matters in evidence.

(2) An order striking pleadings or parts thereof or staying further proceedings until the order is obeyed or dismissing the action or proceeding or any part thereof or, rendering a judgment by default against the disobedient party.

(3) An order treating as a contempt of court the failure to obey.

(4) An order requiring the party failing to obey the order or the attorney advising the party or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the court finds that the failure was substantially justified or that other circumstances make an award of expenses unjust.

Mo. Sup. Ct. R. 61.01 (emphasis added).

Defendants may argue that they are not in contempt because they filed a motion to reconsider the Court's order. Defendants filed the motion on June 28, 2013, but did not attempt to have it heard before the July 12 deadline. In addition, the motion was not ruled on before the deadline. Moreover, Rule 61.01 does not carve out any exceptions to the time limits for objections sought to be reconsidered after already having been overruled by the court. Accordingly, the motion to reconsider did nothing to extend Defendants' time for providing the ordered discovery.

WHEREFORE, Plaintiff requests that this Court hold Defendants in contempt and/or sanction them for failing to comply with the May 13, 2013 order.

DATED: August 1, 2013

/S/ Nicole Gorovsky  
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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 1<sup>st</sup> day of August, 2013 the foregoing notice was filed electronically with the Clerk of Court, therefore to be served electronically by operation of the Court's electronic filing system. A copy was also served via electronic mail in PDF format to:

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*Attorneys for Defendants*

/S/Nicole Gorovsky



**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
TWENTY-SECOND JUDICIAL  
STATE OF MISSOURI**

JANE DOE 92,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Cause No. 1122-CC10165
	)	
ARCHDIOCESE OF ST. LOUIS, a Non-	)	Div. 1
Profit Corporation, ARCHBISHOP	)	
ROBERT J. CARLSON of the Archdiocese	)	
of St. Louis, and FATHER JOSEPH Ross	)	
	)	
Defendants.	)	

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR PARTIAL  
RECONSIDERATION OF ORDER TO COMPEL**

In their "Motion for Partial Reconsideration of Order to Compel," Defendants argue that they should be entitled to withhold discovery that they have been ordered to produce. More specifically, Defendants contend that although the Court ordered them to disclose complaints of sexual abuse by others, they should not have to disclose such information. Defendants accuse the Court of being overbroad in its ruling, of causing Defendants undue burden and of invading the privacy of third parties.

**I. STATEMENT OF FACTS**

**A. Background Facts**

In approximately 1988, Father Joseph Ross was convicted in St. Louis County, Missouri, of sexually assaulting an eleven year old boy during confession. Following the conviction, Ross was sent to the St. Luke Institute. The St. Luke Institute is a mental health treatment facility located in Silver Springs, Maryland, that primarily treats Catholic priests for, among other



things, sexual disorders. Following his time at the St. Luke Institute, the Archdiocese assigned Father Ross to St. Cronan's Church in St. Louis, Missouri. Father Ross worked and lived at the St. Cronan's Church and Parish Center from approximately 1991 until 2001.

Priests were generally aware that the St. Luke Institute was a place that priests were sent for substance abuse and sexual problems. Accordingly, when Father Ross was assigned to St. Cronan's, another priest who lived there asked two officials at the Archdiocese if he should be concerned for the parishioners of the parish. Despite Father Ross' earlier conviction for sexually assaulting a minor, both officials told the priest that the Archbishop assured them that Ross was not a danger to others.

A few years later, in the late 90's, Plaintiff Jane Doe 92 began attending St. Cronan's Church. She was approximately five or six years old when she met Father Ross. Plaintiff was often approached by Father Ross at church when her mother was singing in the choir. He befriended her and she came to trust and admire him.

After a brief grooming process, Father Ross began sexually abusing Plaintiff in St. Cronan's Church and Parish Center. The abuse happened on a weekly basis and was often violent. He had her touch his penis with her hand and mouth. He also inserted his penis and other objects in her vagina. He used his fingers, beads, coins, and kitchen utensils to "stretch" her vagina open so that he could penetrate her with his penis. He also inserted items into her anus. Plaintiff often vomited and bled during these encounters. If she was "bad," Father Ross forced her to put her hand in boiling coffee water as punishment. Being "bad" meant "not making him happy." The abuse continued until Plaintiff was nine years old.

As he abused her, Father Ross told Plaintiff that she should be proud to get to do these activities with him because she was helping him. He explained that he liked boys more than

girls, and that she was helping him to overcome this problem. Ross told her that he was sick and that he needed help to get better but that he could not ask anyone else for help because he wouldn't be in the church anymore. He also told her that he was helping to discipline her because her parents did not discipline her properly. Plaintiff was convinced that she was going to marry Father Ross one day and he told her that he would "always be in" her.

When Plaintiff was approximately thirteen years old, she heard a lecture in school about how boys should be gentlemanly toward girls. She then disclosed to her mother that Father Ross had hurt her.

### **B. Procedural History**

On October 24, 2011, Plaintiff filed a petition with this Court alleging multiple claims against the Archbishop and Archdiocese of St. Louis and against Joseph Ross. The four count petition alleges sexual abuse and/or battery against all defendants, and negligent supervision of a priest. It also alleges intentional failure to supervise clergy, and negligent failure to supervise children against the Archdiocese and the Archbishop.

The Plaintiff moved to use a pseudo name in her court filings in order to protect her identity in this graphic and sensitive lawsuit. The Court granted the motion on October 24, 2011 stating that if she were not permitted to use a pseudo name it would expose her to "public ridicule and humiliation."

Since that time, discovery has been ongoing. Plaintiff responded to Defendants' discovery requests on May 31, 2012. Plaintiff further provided a privilege log on March 4, 2013. Defendants filed the motion to compel at issue here on May 6, 2013.

On March 5, 2013, Plaintiff filed a motion to compel. The motion was argued on May 13, 2013, and Defendants were ordered to disclose documents in this case. Defendants failed to

comply with that order and on August first, Plaintiff filed a motion for contempt and/or sanctions against Defendants. Defendants subsequently filed the Motion for Partial Reconsideration of Order to Compel at issue here.

## **II. ANALYSIS**

Information about other sexual misconduct by Archdiocese priests and employees is important to prove that the Archdiocese's failure to properly supervise Fr. Ross was intentional and not simply a mistake or poor management. A cause of action for intentional failure to supervise clergy requires proof that (1) a supervisor exists, (2) the supervisor knew that harm was certain or substantially certain to result, (3) the supervisor disregarded this known risk, (4) the supervisor's inaction caused damage, and (5) the other requirements of the Restatement (Second) of Torts, section 317 are met. Gibson v. Brewer, 952 S.W.2d 239, 248 (Mo. Banc 1997). Accordingly, the information that the Defendants seek to conceal is essential to Plaintiff's case. It is also relevant, material and not privileged in any way.

Defendants ask the Court to reconsider its ruling in three ways. Each suggestion is an attempt by the Archdiocese to whittle away at the Court's order and to undermine the discovery process in this case.

### **A. Defendants' Suggestion that they should only have to disclose allegations of sexual abuse that occurred prior to Plaintiff's abuse would lead to an unjust result**

Defendants allege that they should only have to disclose allegations of sexual abuse that occurred prior to Plaintiff's abuse. Defendants fail to mention in their motion that they asked for this at the hearing held on this issue and the Court ruled against them. The Court ruled that allegations of sexual abuse that occurred after Plaintiff's abuse are relevant to punitive damages in this case and therefore fall within the bounds of proper discovery.

Moreover, Defendants know that victims of sexual abuse often report their allegations after a significant amount of time. Thus, it is possible (and likely) that someone reported in 2001 that they had been abused by Ross in 1983, and that they reported the abuse to the bishop at that time but the bishop did not make a record. Allowing Defendants to hide such information creates an unjust result.

Although Defendants' motion for partial reconsideration states that "this [1983-2003] time frame was written into the Order because, following the hearing, counsel for the parties could not agree on an interpretation of the Court's intent as expressed during this argument. This timeframe was written into the Order as a temporary solution to that confusion, with an understanding between counsel that the matter would be revisited for clarification," (D Motion 2-3) this is patently false.

Following the Court's oral pronouncements from the bench on these matters, counsel discussed which 20 years the order would cover. After some discussion, Plaintiff's counsel suggested the timeframe of 1983-2003, and Defendants' counsel agreed. There was absolutely no agreement to revisit the issue. The order was agreed to by attorneys for both parties and it was signed by the Judge. Defendants' counsel is simply not credible in stating "it is Defendants' counsel's understanding that the Court ordered discovery on this information for twenty (20) years *prior* to the alleged period of abuse, but not after." (D Motion 3). Notably the attorney who signed the present Motion with this inaccurate statement in it is not the same attorney who appeared in Court to hear the Judge's order that day and is not the attorney who signed the agreed to order at the end of the hearing.

Defendants further argue that limiting the allegations to only ones made prior to Plaintiff's abuse is logical because "post-event allegations and incidents have no bearing on this issue [punitive damages]." (D Motion 3). This argument is nonsensical. "Punitive damages require clear and convincing proof of a culpable mental state, either from a wanton, willful, or outrageous act, or from reckless disregard for an act's consequences such that an evil motive may be inferred." Entwistle v. Mo. Youth Soccer Ass'n, 259 S.W.3d 558, 573 (Mo.App. E.D. 2008). Evil motive may be implied from "reckless disregard of another's rights and interests." Williams v. Trans States Airlines, Inc., 281 S.W.3d 854, 870 (Mo. App. E.D. 2009). The case law is clear that conduct is shown to be outrageous because of evil motive or reckless indifference to the rights of **others**. Perkins v. Dean Mach. Co., 132 S.W.3d 295, 299 (Mo App. W.D. 2004); Walker v. Hanke, 992 S.W.2d 925, 936 (Mo.App. W.D.);

Defendants cite State ex. Rel. Ford Motor Co. v. Messina, 71 S.W.3d 602, 608 (Mo.banc 2002), to argue that only evil intent that was directed at Plaintiff specifically is relevant to punitive damages. The Messina case involves an injury by a Plaintiff from one of the Defendant's products – the Ford Bronco. The Court in Messina determined that recalls of other products were not admissible regarding the issue of punitive damages because, "Punitive damages should deter wrongful conduct; they should not encourage companies to ignore or disavow - rather than remedy - product defects." Id. The case is not entirely comparable to the present case. However, the Court went on to say: "Other recalls are relevant only if the products and their alleged defects are the same or substantially similar." Id. Although Defendants really have to stretch to make this case applicable at all here, if one were to consider sexually abusive priests to be the defective product of the Defendants, sexual proclivities toward children by priests other than Ross could be considered defects that are "the same or substantially similar."



Of course cover ups of priest abuse that occurred after Plaintiff's abuse are relevant to punitive damages. It is the same or substantially similar conduct of Defendants at issue here.

**B. Defendants suggestion that they should only have to disclose allegations of sexual abuse made by a minor against a priest should be denied**

Next defendants argue that they should only have to disclose allegations of sexual abuse made by a minor against a priest. In other words, Defendants seek to keep secret any sexual abuse allegations made against any other employees and/or clergy of the Archdiocese. Granting this suggestion would allow the Defendants to evade relevant discovery.

It is relevant to Plaintiff's case how the Archdiocese handles sexual abuse within its organization, not just with one class of employee. Allowing Defendants to withhold information regarding other types of clergy and employees would be arbitrary, and would allow the Defendants to play games with semantics. For example, Defendants could withhold information about allegations against the perpetrator in this case because he was only a seminarian or a deacon when the accusation occurred. Or, they could hide information that the administrative person who received allegations of abuse against the perpetrator, was himself a perpetrator who never took allegations of sexual abuse seriously.

Defendants cite Govreau v. Nu-Way Concrete Forms, Inc. 73 S.W.3d 737, 742 (Mo.App. E.D.) to argue that discovery should be limited here. However, the Govreau case reviewed what evidence was admissible at trial, not what evidence was discoverable. Thus, Govreau is too narrow to be applicable here. Even if it were applicable, the Govreau Court stated that for evidence of prior incidents to be admissible in trial the incidents must be similar. Plaintiff's

discovery request seeks other instances of sexual abuse by employees of Defendants. This is certainly similar enough to Plaintiff's case to warrant discovery.

Defendants argue that limiting the discovery in this way would "alleviate some of the significant burden of complying with the order as written." (D Motion 5). It is interesting that the Archdiocese believes that disclosing sexual abuse allegations is so burdensome. If there are so many sexual abuse allegations that the Archdiocese can credibly state that going through them would be overwhelmingly burdensome, then the disclosure is all the more necessary. Allowing them to hide allegations of wrongdoing by their employees merely because there are too many to go through would be senseless.

**C. Defendants' suggestion that they should have to disclose *only* confirmed sexual abuse cases would allow defendants to hide essential discovery**

Lastly and most brazenly, Defendants make the self-serving suggestion that they should have to disclose *only* sexual abuse allegations "brought forward as a result of civil litigation or criminal prosecution resulting in a guilty plea, *nollo contendre*(sic), or Alford plea, or settlement and where the Archdiocese subsequently placed the priest in a role involving contact with minors." (D. Motion 2). This suggestion would allow the Archdiocese to hide their liability in the exact same manner that led to Plaintiff's abuse in the first place. Granting this request would allow the fox to guard the hen house.

In a desperate attempt to support their position, Defendants cite State v. Goodliffe, 578 P.2d 1288, 1290 (Utah 1978) to argue that "allegations of prior incidents of similar conduct have no relevance" (D. Motion 5). However, the Goodliffe case is a *criminal* case out of *Utah* from 1978 that deals with *trial* evidence. It has absolutely no bearing on the case at bar.

More recent Missouri cases allow for discovery of prior allegations of misconduct in civil cases. In M.E.S v. Daughters of Charity Services, 975 S.W.2d 477, 481 (Mo.App.E.D. 1998), “the disputed fact issue was whether DePaul could or should have foreseen their employee would engage in sexual relations with a mental patient during the patient's DePaul hospitalization.” The court ruled that a particular document at issue “would have provided plaintiffs with evidence DePaul knew there had been a prior sexual misconduct allegation made against Huebner,” and that therefore the fact that Defendants withheld the document from discovery was inappropriate. Id. The Plaintiffs in the M.E.S. case received a new trial in part because the document was withheld in discovery. *Also See generally* State of Missouri ex. Rel. Delmar Gardens North Operating, Inc. et al. v. Gaertner 239 S.W.3d 608, 612 (Mo.banc 2007) (Suggesting a more narrowly tailored discovery request include prior allegations of misconduct).

In fact, Plaintiff is required to present the prior allegations at trial that Defendant attempts to withhold. As explained above Gibson v. Brewer makes it an element of Plaintiff’s intentional tort case that Plaintiff show evidence that Defendants had prior notice that the priest was dangerous. Prior accusations are required to prove this element.

**D. It is perplexing that the Archdiocese simultaneously argues in sex abuse cases that they have no liability because they were not aware of sexual abuse allegations and that digging through sexual abuse allegations within their organization is overly burdensome**

Defendants dedicate an entire page of their motion to alleging that the Court’s discovery order is too burdensome. They allege that to comply, “every unit will need to be individually searched and with interviews of current and former employees during the time span.” This must be hyperbole. For over ten years, “ministers” as defined in 352.400 RSMo have been mandated reporters. If the Defendants have not had some way to track and report sexual abuse allegations

within its organization, to ensure that they have been in compliance with that law, they have been in violation of the law for many years.

Moreover, it would be unjust to relieve Defendants from providing essential discovery merely because they claim that it would take too much work to find prior allegations of sexual abuse within their organization. They seem to be alleging that they have so recklessly disregarded the sexual abuse problem within their organization that they cannot possibly sort it out now. If they would like to present this argument at trial, they would be essentially stipulating that they have intentionally inflicted abuse on countless children because they were so overburdened by the prospect of investigating and/or reporting it.

Defendants are simply not credible when they claim that this discovery request is overly burdensome. According to defendants' website, since the early 1990's, they have had a committee to address child abuse issues within the organization. *See* <http://archstl.org/ocyp/page/child-safety-committee>. The committee was organized to assist "in the establishment of appropriate actions and responses for archdiocesan personnel in **identifying and dealing with** child abuse." *Id.* (emphasis added). The chairperson of the committee has been in his role as the Director of the Office of Child and Youth Protection for many years and the website directs people with sex abuse allegations to contact him. *Id.* The Office of Child and Youth Protection "serves persons who bring forward allegations of sexual abuse by a member of the clergy or by lay employees or volunteers of the archdiocese." <http://archstl.org/ocyp>.

Moreover, Archbishop Carlson states on the website that "For my part, I desire to speak with all who have been the victims of abuse in the Church." He neglected to report on the

website that although he *desires* to speak with the Church's victims, it is overly burdensome for him to do so.

**E. The Court already granted Defendants' request for a protective order to cover these issues**

Defendants argue for three pages in their Motion that the discovery ordered should be subject to a protective order (D Motion 7-10). The Court, on May 13, 2013, agreed with Defendants on this point and stated in the written order that "If the complainant expressly requested confidentiality, Defendant may so state and withhold the person's name. The names of the other complainants shall be subject to a protective order." (See Attached order).

Even though Defendants have already raised this argument and the Court has granted the protective order they seek, Plaintiff takes issue with Defendants' claim that "Plaintiff's counsel openly admits that he intends to publish all of the information in the media and on the internet regardless of the legitimacy of the allegations involved, despite there being no legitimate reason to do so." (D. Motion 7). Defendants fail to cite to anything to support this claim. Moreover, Plaintiff's counsel has never published names of victims of sexual abuse in the media without explicit consent and has never stated an intent to do so. Plaintiff's counsel has also never published such information on the internet. Such language is an example of the lengths that the Defendants will go to exaggerate their position and is inappropriate here.

**III. CONCLUSION**

Defendants Motion for partial reconsideration of this Court's order to compel of May 13, 2013, is without merit. It should be denied in its entirety.



Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 12<sup>th</sup> day of November, 2013 the foregoing motion was filed electronically with the Clerk of Court, therefore to be served electronically by operation of the Court's electronic filing system. A copy was also served via electronic mail in PDF format to:

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*ATTORNEYS FOR DEFENDANTS*

/s/ Nicole E. Gorovsky

**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI**

JANE DOE 92,	)	
	)	
Plaintiff,	)	
	)	Case No. 1122-CC10165
vs.	)	
	)	Division 1
ARCHDIOCESE OF ST. LOUIS, et al.	)	
	)	
Defendant.	)	

**DEFENDANTS’ REPLY BRIEF IN SUPPORT OF MOTION FOR PARTIAL  
RECONSIDERATION OF ORDER TO COMPEL REGARDING  
POST-INCIDENT EVENTS**

Defendants the Archdiocese of St. Louis and Archbishop Robert J. Carlson (collectively “Archdiocese”) hereby file this Reply Brief in Support of Motion for Partial Reconsideration of Order to Compel Regarding Post-Incident Events.

**INTRODUCTION**

In its May 13, 2013 Order, this Court ordered the Archdiocese to produce certain information regarding allegations of sexual abuse involving the Archdiocese from 1983 to 2003. Because the last alleged incident of abuse against Plaintiff occurred in 2001, this necessarily includes incidents of abuse occurring after Plaintiff’s abuse. Such post-incident events are irrelevant to the Archdiocese’s knowledge or culpability at the time of Plaintiff’s alleged abuse, and therefore are likewise irrelevant to the issue of punitive damages. Consequently, the Archdiocese should not be compelled to produce information of post-incident complaints or events – those occurring after the date of the last alleged abuse.

**ARGUMENT**

Plaintiff has cited no Missouri authority establishing that post-incident events are relevant or discoverable for a punitive damages claim. Indeed, in Plaintiff’s first cited case, Drury v.

Missouri Youth Soccer Ass'n, Inc., 259 S.W.3d 558, 574 (Mo. Ct. App. 2008), the evidence establishing a culpable mental state related to conduct by an employer *before* the employee was terminated and declined a sham position, not the employer's conduct after that event. In Plaintiff's second case, the court found that a similar incident (termination for claiming sexual harassment) was relevant to the punitive damages analysis. Williams v. Trans States Airlines, Inc., 281 S.W.3d 854, 872 (Mo. Ct. App. 2009). Notably, the other incident occurred *before* the plaintiff's termination. Id.

Plaintiff's last two cited cases, Perkins v. Dean Mach. Co., 132 S.W.3d 295, 300 (Mo. Ct. App. 2004) and Walker v. Hanke, 992 S.W.2d 925, 937 (Mo. Ct. App. 1999), are entirely inapposite because they do not involve similar incidents evidence of any sort to support a punitive damages claim. Plaintiff merely cited those cases for the notion that punitive damages are appropriate where outrageous conduct is shown against others. The cases do not opine on post-incident events.

But in an adjacent jurisdiction, Illinois courts have expressly considered this issue, holding that post-incident events are in fact irrelevant to claims for punitive damages. Moore v. Remington Arms Co., Inc., 100 Ill. App. 3d 1102, 1111, 427 N.E.2d 608, 615 (1981) ("The question placed no time limit on 'similar occurrences,' and thus Remington's answer could have included only incidents that occurred after the explosion in this case. *Clearly, only prior occurrences are relevant to establishing plaintiff's claim for punitive damages.*"). Such a result makes perfect sense, of course, because a defendant cannot be said to have knowledge of events that have yet to occur. As another Illinois appellate court stated:

We agree with the court in Moore v. Remington Arms Co., that subsequent occurrences are not relevant to establishing a claim for punitive damages. Punitive or exemplary damages are awarded when a defendant acts willfully, or with such gross negligence as to indicate a wanton disregard of the rights of

others. . . . [E]vidence of subsequent occurrences cannot establish that a manufacturer was aware of the dangerous condition of its product at the time of the plaintiff's injury and failed to act to lessen or eliminate the danger to the plaintiff. Any knowledge gained by a manufacturer from a subsequent occurrence would not be timely. Such knowledge cannot indicate a disregard of the rights of others and cannot be the basis for an award of punitive damages.

Bass v. Cincinnati, Inc., 180 Ill. App. 3d 1076, 1083, 536 N.E.2d 831, 835 (1989) (internal citations omitted).

The Bass court's reasoning is persuasive here. Evidence of alleged instances of abuse occurring after Plaintiff's last alleged abuse is not timely. It cannot be used to indicate that the Archdiocese knew of a dangerous condition or otherwise acted culpably. Accordingly, it cannot be the basis for an award of punitive damages. Plaintiff has provided no Missouri authority to the contrary.

### **CONCLUSION**

The Archdiocese respectfully requests that the Court reconsider its Order compelling production of information regarding sexual abuse allegations and deny the production of such information, or in the alternative, deny the production of incidents or complaints of sexual abuse occurring after the last alleged abuse against Plaintiff in 2001.



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### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served on the following counsel of record via hand delivery and the Court's electronic filing system, this 15th day of November, 2013:

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**IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS  
STATE OF MISSOURI**

JANE DOE 92,	)	
	)	
Plaintiff,	)	
	)	Case No. 1122-CC10165
vs.	)	
	)	Division 1
ARCHDIOCESE OF ST. LOUIS, et al.	)	
	)	
Defendants.	)	

**DEFENDANTS' TIMELINE MEMORANDUM**

This Timeline Memorandum is filed on behalf of Defendants Archdiocese of St. Louis and Archbishop Robert J. Carlson (collectively the "Archdiocese").

May 13, 2013: This Court issues partial Order regarding issues pending on the Parties cross motions to compel. In pertinent part, the Order provides:

- Within ten (10) days, the Archdiocese would submit an amended privilege log and memorandum of law in support of it. The Plaintiff would then have approximately five (5) weeks to oppose that memorandum – i.e., until June 28, 2013. This lengthy response time was agreed set because Plaintiff's lead counsel represented that he would be out of town and unavailable for much of the month of June.
- The Archdiocese would provide the ordered data regarding prior allegations of abuse within sixty (60) days – i.e., July 12, 2013.
- The Court granted the Archdiocese's motion for a protective order regarding the personnel file. The Order requires the parties "attempt to agree on the terms of said order."
- Based on Plaintiff's counsel's representation that Plaintiff would voluntarily produce much of the information and documents requested through the

Archdiocese's motion to compel, the Order defers ruling on the Archdiocese's motion "pending the parties' further attempt to resolve the terms of a protective order and other issues."

May 24, 2013: Archdiocese serves its amended privilege log and files its supplemental memorandum of law in support thereof.

June 28, 2013: Archdiocese files its Motion for Partial Reconsideration. This motion regards only the portion of the May 13<sup>th</sup> Order going to data of prior allegations of abuse. It is filed two (2) weeks prior to the date set for production of data.

July 2, 2013: Archdiocese sends to Plaintiff's counsel, via email, its proposed protective order in furtherance of the Court's Order. (See Group Exhibit A, attached.)

July 30, 2013: Archdiocese sends email to Plaintiff's counsel seeking hearing dates to take up the following issues:

- (1) The Archdiocese's Motion to Reconsider the prior Court order and your [Plaintiff's counsels'] objections to it;
- (2) The propriety of the Archdiocese's privilege log, which the parties briefed following the last hearing pursuant to the Court's order; and
- (3) Any outstanding issues on protective orders. At the last hearing the parties represented that, going both ways, they would work on a protective order to exchange information.

Archdiocese proposes hearing dates of August 23, September 3-6 and September 23-27. (Id.)

July 31, 2013: This Court issues its Order regarding the Archdiocese's privilege log. In that Order, the Court notes that the Archdiocese had filed its Motion for Partial Reconsideration, which the Court had not yet heard.

August 1, 2013: Plaintiff, without responding to the Archdiocese's request for hearing dates, files Motion for Citation of Contempt and/or Sanctions regarding the Motion for Partial Reconsideration, which was filed thirty-four (34) days previously and for which the

Archdiocese had sought hearing dates.

August 8, 2013: Archdiocese again seeks hearing dates from Plaintiff's counsel, noting if it does not hear back it will set all pending matters for August 23, 2013. (Id.) Plaintiff responds, requesting the latest dates offered for hearing of September 23-27<sup>th</sup>. (Id.)

August 9, 2013: Parties settle on September 24<sup>th</sup> for hearing. Archdiocese reminds Plaintiff's counsel that it has not heard back regarding the protective order it proposed on July 2, 2013. (Id.)

August 29, 2013: Archdiocese sends Plaintiff's counsel email noting that the 8<sup>th</sup> Circuit set appellate oral argument in a different Archdiocese case creating a conflict with the September 24, 2013 hearing date. Archdiocese proposes next available dates of September 25, October 10 and October 11, 2013. (Id.)

September 9, 2013: The Parties settle on October 10, 2013, for the hearing. (Id.)

October 1, 2013: Archdiocese files Motion for Reconsideration based on *In Camera* Review (regarding July 31, 2013, Order).

October 2, 2013: Plaintiff's counsel sends to Archdiocese counter-proposed protective order, three (3) months after Archdiocese sent original proposal. (Id.)

October 8, 2013: Plaintiff's counsel informs Archdiocese that due to a sudden death in the family, the hearing will need to be continued, and the Archdiocese consents. (Id.)

October 17, 2013: Plaintiff's counsel suggests a preference for November 15, 2013 hearing date to which the Archdiocese agrees.

Dated: November 15, 2013

GREENSFELDER, HEMKER & GALE, P.C.

By /s/ Robert L. Duckels

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