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 Nov. 15, 2013

ORDER/JUDGMENT/MEMORANDUM

Parties appear by counsel for argument on motions. The Court rules as follows:

Defendants' Motion for Partial Reconsideration of Order to Compel (dated May 13, 2013) granted & denied in part. The provisions of ¶4 of the Order dated May 13, 2013, are modified so that Defendants shall produce the required information for non-clergy employees, which includes employees of Parishes of the Archdiocese, for the period 1/1/1996 through 12/31/2000. For all clergy employees the May 13, 2013 Order stands as written and covers the period July 1, 1983 through June 30, 2003. Defendants shall produce all such information within 30 days of this Order or Defendants' pleadings will be stricken. Defendants may seek leave to apply for an extension of the 30 day time limit for the non-clergy employees if the effort to

FORM 14 (Rev 11/02)

MISSOURI CIRCUIT COURT
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VS

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ORDER/JUDGMENT/MEMORANDUM

gather such information has begun but requires additional time.

The foregoing disclosures shall be subject to the protective order ~~to be~~ issued by the Court. ~~The Court received proposed protective orders drafted by the parties for the Court's consideration.~~

Defendants' Motion to Reconsider Based on In Camera Review argued and denied.

Plaintiff's Motion for Contempt and/or Sanctions is denied except as otherwise provided in this Order.

Defendants' Motion to Compel will be submitted without further argument, based on the briefing filed to date plus one additional memorandum by Defendants to be filed today and a reply memorandum by Plaintiff to be

FORM 14 (Rev 11/02)

MISSOURI CIRCUIT COURT
TWENTY-SECOND JUDICIAL CIRCUIT
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Doe 92

VS

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CASE NO. 1122-CC01165 DIVISION 18

ORDER/JUDGMENT/MEMORANDUM

filed by November 25, 2013. Plaintiffs have agreed to provide the information and documents sought in Defendants' Motion to Compel, subject to the Protective Order, except for attorney-client communications & attorney work product. ~~[illegible]~~ Discovery regarding Plaintiff's asserted rape crisis center privilege is to be decided by the Court.

Kim Charles #27534
Atty for P.
Robert L. Duke Is #52432
for D

So ordered:

JT

FORM 14 (Rev 11/02)

Δ's Version

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.	)	

PROTECTIVE ORDER

The Court hereby enters, pursuant to Mo. Sup. Ct. R. 56.01(c), the following Protective Order governing all discovery in connection with this case.

1. This Protective Order is binding upon all Parties to this litigation, and upon each Party's respective attorneys, agents, representatives, employees, accountants, experts and consultants as set forth in this Protective Order.

2. Over the objection of Plaintiff, this Court has Ordered that the personnel file of Joseph Ross shall be subject to a protective order. Counsel for Plaintiff and for Defendants Archdiocese of St. Louis and Archbishop Carlson agree upon the terms of this Protective Order for that personnel file and other documents that a party may designate as confidential pursuant to the terms of this Protective Order or as otherwise Ordered by the Court. Any Party shall have the right to identify and designate as "CONFIDENTIAL" pursuant to this Protective Order any documents or other materials it produces or provides, or any testimony given, which testimony or discovery material is believed in good faith to constitute, reflect or disclose its non-public, sensitive, personal, privileged, confidential or proprietary information ("Confidential Information"). In addition, all documents, depositions, discovery, and the information contained therein, and all other information produced or disclosed during this litigation that contains the

true name of the Plaintiff shall be considered Confidential Information covered by this Protective Order, whether it is designated as such or not.

3. Confidential Information may be designated as follows:

(a) Specific documents and interrogatory answers may be designated as "CONFIDENTIAL" by marking the first page of the document and each subsequent page thereof containing Confidential Information and any answer as "CONFIDENTIAL."

(b) Confidential Information disclosed at a deposition may be designated "CONFIDENTIAL" as follows:

(i) by designating testimony as "CONFIDENTIAL" on the record during the taking of the deposition; or

(ii) by notifying all other Parties in writing, within twenty (20) calendar days of receipt of the transcript of a deposition of specific pages and lines of the transcript which are designated as "CONFIDENTIAL," whereupon each Party shall attach a copy of such written designation to the face of the transcript and each copy thereof in that Party's possession, custody or control. To facilitate the designation of Confidential Information in deposition testimony, all transcripts of depositions shall be treated, in their entirety, as Confidential for a period of twenty (20) days following delivery by the court reporter of certified transcripts to all Parties, during which time a Party may designate portions of such transcripts as "CONFIDENTIAL" pursuant to this paragraph.

(iii) If Confidential Information is used during depositions, it shall not lose its confidential status through such use, and counsel shall exercise their best efforts and take all steps reasonably required to protect its confidentiality during such use.

4. Interrogatory answers containing Confidential Information may be separately bound.

5. Confidential Information may be used exclusively in connection with this case and may be disclosed only to the following persons in connection with the preparation of this case for trial:

(a) outside counsel employed by a Party, and any paralegals, assistants and clerical employees in the respective law firms of such outside counsel;

(b) any outside consultant or expert who is assisting counsel of a Party;

(c) the Court and any members of its staff;

(d) deponents, trial or hearing witnesses and their counsel, in preparation for and/or during depositions, trial or pretrial hearing motions;

(e) stenographic employees and court reporters recording or transcribing testimony in connection with discovery, depositions, hearings or trial.

6. Persons having knowledge of Confidential Information shall use that Confidential Information only in connection with the prosecution, defense or appeal of this case, and shall not use such Confidential Information for any other purpose, including, without limitation, any publicity, press release, marketing, research, or in any other context or in any other legal case, lawsuit, proceeding or investigation, or otherwise except as expressly provided herein. Persons having knowledge of Confidential Information shall not disclose such Confidential Information to any person who is not listed in paragraph 5 of this Protective Order.

7. Any Party which is served with a subpoena or other notice compelling the production of any Confidential Information produced by another Party shall give written notice to the original designating Party of such subpoena or other notice by facsimile and electronic

mail within three (3) business days. Upon receiving such notice, the designating Party shall bear the burden to oppose, if it deems appropriate, the subpoena. During the pendency of any such application, the Party to whom the subpoena or other notice is directed shall not produce any Confidential Information, unless ordered by a Court of competent jurisdiction.

8. Counsel shall take all reasonable and necessary steps to assure the security of any Confidential Information and will limit access to Confidential Information to those persons listed in paragraph 5 of this Protective Order. Confidential Information produced or provided will be kept in outside counsels' possession or in the possession of outside consultants or experts or other personnel entitled to receive copies of the documents pursuant to Paragraph 5 above.

9. Prior to the disclosure of any Confidential Information to any person identified in paragraph 5 above (other than the Court and its staff), such person shall be provided with a copy of this Protective Order, which he or she shall read and upon reading shall sign a Certification, in the form annexed hereto as Exhibit A, (AS REVISED BY THE COURT) acknowledging that he or she has read this Protective Order and shall abide by its terms. A file of all written acknowledgements by persons who have read this Protective Order and agreed in writing, in the form annexed hereto as Exhibit A, to be bound by its terms shall be maintained by outside counsel for the Party obtaining them and shall be made available, upon request, for inspection by counsel for any Party. Persons who come into contact with Confidential Information for clerical or administrative purposes, and who do not retain copies or extracts thereof, are not required to execute acknowledgements.

10. Any Party may object to the propriety of the designation of specific material as "CONFIDENTIAL" by serving a written objection upon the other Party's counsel. The supplying party or its counsel shall thereafter, within ten (10) calendar days, respond (by hand delivery, courier or facsimile Transmission) to such objection in writing by either (i) agreeing to

remove the designation; or (ii) stating the reasons why the designation was made. If the Parties are subsequently unable to agree upon the terms and conditions of disclosure for the material(s) in issue, the objecting Party shall be free to move the Court for an Order removing or modifying the disputed designation. Pending the resolution of the motion, the material(s) in issue shall continue to be treated in the manner as designated by the supplying Party until the Court orders otherwise. Inadvertent production of any document or information without a designation of confidentiality will not be deemed to waive a later claim as to its confidential nature or stop a Party from designating said document or information as "CONFIDENTIAL" at a later date.

11. Except as agreed in writing by counsel of record, to the extent that any Confidential Information is, in whole or in part, contained in, incorporated in, reflected in, described in or attached to any pleading, motion, memorandum, appendix or other judicial filing, counsel shall file that submission under seal and that document shall be designated and treated as a "Sealed Document." All Sealed Documents filed under seal pursuant to this Protective Order shall be filed in a sealed envelope and shall remain under seal until such time as this Court, or any court of competent jurisdiction, orders otherwise. Such Sealed Documents shall be identified with the caption of this action, a general description of the sealed contents and shall bear the following statement which shall also appear on the sealed envelope:

CONFIDENTIAL

Contents hereof are confidential and are subject to a court-ordered protective order governing the use and dissemination of such contents.

The Clerk of the Court shall maintain such Sealed Documents separate from the public records in this action, intact and unopened except as otherwise directed by the Court. Such Sealed Documents shall be released by the Clerk of the Court only upon further order of the Court.

12. Nothing herein shall be construed to affect in any manner the admissibility at trial or at any hearing before this Court of any document, testimony or other evidence. Nor shall anything in this Protective Order be deemed a waiver of any objection or privilege a Party may claim to the production of any documents.

13. Upon the final disposition of this case, including any appeals related thereto, all Confidential Information and any and all copies thereof, shall be returned within thirty (30) calendar days to the producing Party; provided, however, that counsel may retain their attorney work product and all court-filed documents even though they contain Confidential Information, but such retained work product and court-filed documents shall remain subject to the terms of this Protective Order. In the alternative, either the Party or the person receiving the Confidential Information may elect to have the same destroyed. Upon delivery to the producing Party or destruction of all documents relating to or containing Confidential Information and any and all copies thereof, the person or entity having custody or control of such information shall deliver to the producing Party an affidavit certifying that all such Confidential Information and any copies thereof, and any and all records, notes, memoranda, summaries or other written material regarding the Confidential Information (except for attorney work product and court-filed documents as stated above), have been destroyed or delivered in accordance with the terms of this Protective Order.

14. If Confidential Information is disclosed to any person other than in the manner authorized by this Protective Order, the Party responsible for the disclosure shall immediately upon learning of such disclosure inform all other Parties of all pertinent facts relating to such disclosure and inform the other Parties of all pertinent facts relating to such disclosure and shall

Exhibit 17

make every effort to prevent disclosure by each unauthorized person who received such information.

15. In the event of a proven violation of this Protective Order by any of the Parties or others designated in paragraph 5 hereof, all Parties acknowledge that the offending party or persons may be subject to sanctions determined in the discretion of the Court.

16. Nothing contained in this Protective Order shall preclude any Party from using its own Confidential Information in any manner it sees fit, without prior consent of any party or the Court.

17. By written agreement of the Parties, or upon motion and order of the Court, the terms of this Protective Order may be amended or modified. This Protective Order shall continue in force until amended or superseded by express order of the Court, and shall survive any final judgment or settlement in the Action.

ACCEPTED AND AGREED:

GREENSFELDER, HEMKER & GALE, P.C.

By:_____
Bernard C. Huger, MBE # 21319
bch@greensfelder.com
Edward S. Bott, Jr., MBE # 31934
esb@greensfelder.com
Robert L. Duckels, MBE # 52432
rld@greensfelder.com
10 South Broadway, Suite 2000
St. Louis, Missouri 63102

Attorneys for the Archdiocese of St. Louis, by and through Archbishop Robert J. Carlson, in his representative capacity as Archbishop of the Archdiocese of St. Louis

Dated: _____, 2013

CHACKES, CARLSON & HALQUIST, LLP

By:_____
Kenneth M. Chackes, MBE # 27534
kchackes@cch-law.com
M. Susan Carlson, MBE #37333
scarlson@cch-law.com
Nicole E. Gorovsky, MBE # 51046
ngorovsky@cch-law.com
906 Olive, Suite 200
St. Louis, Missouri 63101

Attorneys for the Plaintiff

Dated: _____, 2013

JEFF ANDERSON & ASSOCIATES, P.A.

By:_____
Jeffrey R. Anderson, MN BAR # 2057
jeff@andersonadvocates.com
E-1000 First National Bank Building
332 Minnesota Street
St. Paul, Minnesota 55101

Attorneys for Plaintiff

Dated: _____, 2013

SO ORDERED:

_____
Circuit Judge, Division 18

Dated: 11/15, 2013

1448398

Exhibit 17

EXHIBIT A

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.	)	

ACKNOWLEDGEMENT OF PROTECTIVE ORDER

I have carefully read the Protective Order in the above-captioned action, agree to be bound by its terms, and consent to be subject to the personal jurisdiction of this Court with respect to any proceeding relating to any enforcement of the Protective Order, including any proceeding relating to contempt of Court. As a condition precedent to my review or examination of any of the documents or other materials produced pursuant to the Protective Order or my obtaining any information contained in said documents or other materials, I hereby agree that the Protective Order shall be deemed to be directed to and shall include me. I acknowledge that I have had an opportunity to discuss this Protective Order and its relevant requirements with the attorney furnishing the Confidential Information covered by that Order.

PROVIDED, THAT THE OBLIGATIONS UNDER THIS ACKNOWLEDGMENT WILL TERMINATE 5 YEARS AFTER THE DATE OF FINAL DISPOSITION OF THE ABOVE-REFENCED CAUSE IN THE ABOVE-CAPTIONED COURT. (RHD)

1448398

_____
[Signature]

_____
[Printed Name]

_____
[Home Address]

_____
[Employer]

_____
[Job Title]

Sworn to before me this
____ day of _____, 200__.

_____
Notary Public

1448398

Exhibit 17

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

JANE DOE 92,	)	
	)	
Plaintiff,	)	
	)	Case No. 1122-CC10165
vs.	)	
	)	Division 18
ARCHDIOCESE OF ST. LOUIS, *et al.*,	)	
	)	**FILED UNDER SEAL**
Defendants.	)	

DEFENDANTS' TENDER OF DISCOVERY AND MOTION FOR MODIFICATION OF ORDER

Defendants Archdiocese of St. Louis and Archbishop Robert J. Carlson, through Carmody MacDonald P.C. and Lewis Roca Rothgerber LLP (*pro hac vice* admission pending) submit this tender of discovery and motion for modification as follows:

I. INTRODUCTION.

Plaintiff's Allegations. Plaintiff alleges she was abused by former priest, Joseph Ross ("Ross"), at St. Cronan's Parish in the City of St. Louis between 1997 and 2001. *See* Petition ¶¶ 4, 23, 40; Plaintiff's Motion to Compel 1. She previously told the police her neighbor raped her twice, but there was no corroborating evidence. At the time of the second alleged rape, witnesses said the alleged rapist was at a Toastmaster event. The police declined to file charges. Ex. A, Plaintiff Depo. 22:10-22:18, 24:12-25:17, 29:15-30:2.

During or before 2009, plaintiff joined the Survivors Network of those Abused by Priests ("SNAP") where SNAP's Outreach Director became her personal contact. *Id.*, 54:10-12, 54:19-21. SNAP routinely publishes discovery from sex abuse litigation.[1] At the Outreach

[1] SNAP routinely publishes discovery from clergy sexual abuse cases. *See, e.g.* its publication on December 2, 2013of a deposition taken in Kansas City, Missouri litigation at http://www.snapnetwork.org/mo_disturbing_deposition_in_clergy_sex_case_is_released. The

Director's suggestion, plaintiff told law enforcement of Ross' alleged assault of her. *Id., 108:25-109:10.* The prosecutor then filed criminal charges against Ross in *State of Missouri v. Joseph Ross* (Case no. 0822-CR05709-01, Cir. Ct. City of St. Louis). In her January 28, 2010 deposition in that case, plaintiff admitted she had been diagnosed with obsessive compulsive disorder. *Id.*, 56:8-11. She testified she is sometimes "detached from reality." *Id.* at 188:8-13. She also said she wanted to recant her allegations against Ross, but SNAP representatives persuaded her "on numerous occasions" not to do so. *Id.* 106:18-107:1. The prosecutor dismissed the criminal charges against Ross related to plaintiff's allegation after she gave her deposition.

Interrogatories and Requests for Documents. Plaintiff filed this civil action on October 24, 2011. She thereafter requested production of the Archdiocesan personnel and other files for Ross and served interrogatories including those below that relate to the matrix tendered today:

> 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.
>
> 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.

Orders. On May 13, 2013, the Court granted Defendants' request for a protected order and ordered Defendants to produce a matrix of allegations of sexual abuse, "for the period 1982-2003," including: "(a) the date of the complaint or allegation, (b) the nature of the complaint,

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principal national website, publishing names of Catholic clergy accused of abuse also links to the SNAP website.

Exhibit 18

(e) identity of the complainant, (d) to whom the complaint was made, the identity of the alleged abused, and (f) the outcome of the complaint."

On November 15, 2013, this Court partially granted Defendants' motion for reconsideration by limiting the time period for that portion of the matrix listing "employees of the Parishes of the Archdiocese" to "the period 1-1-1996 through 12-31-2000." The Court then ordered the Defendants to "produce all such information within 30 days of this Order or Defendants' pleadings will be stricken."

Upon information and belief, no Missouri court has ever ordered production so broad in a case involving one person alleged to have been sexually abused by a second person.

Substitution of Counsel. On Thursday, December 12, 2013, the undersigned filed a substitution of counsel and, for the national counsel, *pro hac vice* motions.

II. TENDER OF DOCUMENTS AND PRIVILEGE LOG TO PLAINTIFF.

A. ***Tender of Ross' File.*** Defendants have now delivered to Plaintiff's counsel Ross' file subject to the Court's protective order. This file consists of approximately 531 pages, Bates stamped ARCHJRPL 0005 – 0536.

B. ***Tender of Ross' Correspondence with Archbishop.*** The Defendants, through prior counsel, claimed that two handwritten letters from Ross to the archbishop were protected by the clergy communications privilege, Mo. Rev. Stat. § 491.060(4). Defendants have now delivered these documents to Plaintiff's counsel subject to the Court's protective order and over their continuing objection that these documents are privileged. These letters consist of four pages. Bates stamped ARCHJRPL 0001 – 0004.

C. ***Tender of Laicization File.*** The Defendants, through prior counsel, claimed that the laicization file sent to the Holy See as part of the Archdiocese's effort to remove Ross from the priesthood was protected by clergy communications privilege, Mo. Rev. Stat. § 491.060(4)

Exhibit 18

and the First Amendment. Defendants have now delivered the laicization file to Plaintiff's counsel subject to the Court's protective order and over their continuing objection that these documents are privileged. This file consists of 129 pages, Bates stamped ARCHJRLF 0001 – 0130. Only thirteen documents contained in the laicization were not previously contained in the Ross' file.

D. ***Tender of Privilege Log.*** Defendants have tendered their privilege log to plaintiff's counsel, solely with regard to the production of Ross' file. It, too, is subject to the protective order. The only privileged asserted on this log is attorney-client privilege, Mo. Rev. Stat. § 491.060(3). The Defendants assert it as regards 26 documents consisting of 34 pages. Given the Court's orders, no documents from the Laicization File are included on the privilege log.

E. ***Tender of Matrix.*** Defendants have now tendered the Matrix to plaintiff's counsel subject to the Court's protective order. Defendants, through the Greensfelder firm, worked diligently reviewing many files and preparing the matrix of accusation information before the Court's November 15 order. Because the Greensfelder firm also represents the parishes and many Catholic agencies, it also reviewed its files regarding accusations received by those entities during the relevant time period. After the Court entered its November 15 order, the Archdiocese also sent letters and follow-up letters to the parishes and Catholic agencies with ties to the Archdiocese. These parishes, like monasteries and the Archdiocese itself, are distinct canonical entities called public juridic persons with a pastor—and not the archbishop—as their administrators. Ex. D, Shamleffer Affidavit, ¶¶ 20-29. These parishes and the agencies are also civilly incorporated as distinct civil corporations from the Archdiocese. *Id.*, ¶ 23. Even though this Court has no jurisdiction over these Catholic parishes and Catholic agencies and even though

Exhibit 18

the Archdiocese has no command authority over them with regard their lay employees, it has sent a letter to each, and a follow-up letter as needed, requesting their full compliance with the Court's order. *Id.*, ¶ 29 (regarding command authority). The Archdiocese has received a substantial number of response from these requests. Those responses, along with what was previously known by the Greensfelder firm, are reflected in the matrix tendered to plaintiff's counsel this day.

The undersigned counsel have been engaged only recently and have themselves been able to review the source data for the matrix tendered this day. They are willing to do so, and the Archdiocese is willing to make further requests of those parishes and agencies that have not yet responded. If this is the Court's direction, the Archdiocese respectfully requests additional time for such a substantial effort.

The matrix tendered to plaintiff's counsel today constitutes substantial compliance and, giving the deadlines counsel are under, constitutes the best possible production at this time. It includes all of the information ordered by this Court except for the names of the complainants and accused persons. The important reasons for these redactions are to prevent harm others and to avoid the trampling of constitutional and other rights as explained in the attached affidavits and the law and argument in Section V, *infra*.

III. ISSUES NARROWED.

With the tenders this day as described above, the Archdiocese has attempted, in good faith, with great effort, and without waiving any prior objections, to substantially comply with the Court's orders. Because of this, only two issues remain:

A. Whether Defendants must disclose names of complainants and accused persons; and

B. Whether the Court should make the protective order permanent.

Exhibit 18

IV. TENDER OF AFFIDAVITS AND OTHER EVIDENCE.

Defendants tender, for the Court's consideration, the following exhibits:

Exhibit A: Selected portions of transcript of Plaintiff's testimony in *State of Missouri v. Joseph Ross* (Case no. 0822-CR05709-01, Cir. Ct. City of St. Louis). Plaintiff's name has been redacted.

Exhibit B: Affidavit of Barbara Ziv, M.D. (regarding effect of disclosures of complainants' names).

Exhibit C: Affidavit of Barry Zakireh, Ph.D. (regarding effect of disclosures of complainants' names).

Exhibit D: Affidavit of Msgr. John Shamleffer, J.C.L., M.C.L. (regarding canon law and pastoral concerns as to disclosure of names and other confidences, and regarding church polity).

Exhibit E: Affidavit of Archbishop Robert J. Carlson (affirming, as hierarch, Msgr. Shamleffer's analysis).

V. ARGUMENT.

A. Burden. "The party seeking discovery shall bear the burden of establishing relevance." M.R.C.P. 56.01(b)(1).

B. The Names of Complainants and Accused Persons Is Not a Proper Subject for Discovery.

1. ***Irrelevance of Names to Plaintiff's Argument in Favor of Production of Matrix.*** In her motions and briefs, plaintiff makes two arguments in support of her request for production of the Matrix. First, she contends that "other incidents of sexual 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" and that such evidence "prove[s] that the Archdiocese's failure to properly supervise Fr. Ross was intentional." Plaintiff's Motion to Compel at 14 (filed 3-15-13). Second, she contends that the Matrix might be relevant to her claim for punitive damages.

Given Defendants' production of the Matrix, there is no need to explain again how little merit these arguments have. What is important is to note the inclusion of names of complainants and accused persons have zero relevance to the notice the Archdiocese received, its habits, or to whether punitive damages are warranted. This is undoubtedly why the plaintiff has, in its prior briefs, never once argued about the importance of discovering names. Indeed, the Court should note that plaintiff is herself prosecuting this lawsuit pseudonymously without little or no adverse effect to the truth seeking function of this process.

2. ***Serious Potential Wounding of Other Complainants and Accused Persons If Names Disclosed.*** As explained in the attached Affidavits of Drs. Zakireh and Ziv, the Court's Order contemplating disclosure of the names of complainants and accused persons involves a serious risk of significant harm to those persons. Barry Zakireh, Ph.D., a licensed psychologist, and Barbara Ziv, M.D., Board Certified Psychiatrist, both have extensive experience in the treatment of victims of crime, including sexual crimes and minors, and of the impacts on allegations of crimson the accused. Zakireh Aff. ¶¶3-7; Ziv. Aff. ¶¶3-7. Both were part of a multi-disciplinary team reviewing historical allegations of child sexual abuse by clergy in the Archdiocese of Philadelphia. Zakireh Aff. ¶3; Ziv Aff. ¶3.

Both attest, having reviewed the orders in this case, that the disclosure of the identities of victims who have made complaints of sexual abuse and the identities of the persons accused of sexual abuse "would be harmful both to victims who made complaints in the past and persons

Exhibit 18

who have been wrongfully accused." Zakireh Aff. ¶11; *accord* Ziv. Aff. ¶11. Dr. Zakireh explains:

> Individuals who have experienced sexual abuse often re-experience a host of negative emotions and potential behavioral disturbances or impairment when reminded of their traumatic experiences. . . . Furthermore, victims often feel victimized again by not having their privacy maintained and having this information disclosed to others without their prior consent. In such situations, victims often feel they are forced or coerced to re-live traumatic events. Those feelings can especially be induced, for instance, by being contacted by investigators or attorney in law-enforcement or judicial systems years later to see if they were interested in filing criminal complaints or civil claims or to potentially testify in relevant cases. Such victims overwhelmingly prefer to keep such information private, and especially to maintain control over how and when any future disclosures would be made. . . .

Zakireh Aff. ¶ 11(a) (emphasis added). Thus, "[s]urvivors of sexual assault need to trust that their privacy will be respected, which in turn will make it less likely that they experience humiliation, shame, and fear which reinforces their silence." Zakireh Aff. ¶11(b).

Dr. Ziv agrees:

> Individuals who have experienced sexual abuse have the right to privacy. Sexual abuse is a traumatic experience and most individuals who are victims of childhood sexual abuse choose to disclose their experience to a limited number of trusted individuals. . . . To expose victims of abuse to this disclosure and potential public scrutiny would likely result in anger, anxiety, feelings of victimization and possibly more extreme psychiatric symptoms, such as depression, post-traumatic stress disorder or suicidal thoughts or feelings. It is the right of victims to have control over how and when disclosure of abuse is made. Thus, in my professional opinion, it would be harmful to victims of prior sexual abuse to disclose their identities to others who may contact them, and especially to the public at large.

Ziv. Aff. ¶12. (emphasis added). In Dr. Ziv's professional opinion, "the form of disclosure contemplated by the court's order and the use of victims' names and accounts without notice or

Exhibit 18

prior consent would likely lead to the types of psychological harms described above." Ziv. Aff. ¶13.

A similar likelihood of harm exists to those wrongfully accused persons, who are also caught up in the Court's Order. "[W]rongly-accused persons are also often traumatized and harmed by having false accusations made public to others," which "includes harm to their psychological well-being, personal and professional lives, and reputation in the community" and "is especially likely and harmful, when the allegations involve claims of sexual abuse." Zakireh Aff. ¶13; *accord* Ziv. Aff. ¶14. Thus, it is the professional opinion of both doctors that the disclosure of such persons' names to others, and certainly to the public at large, would likely lead to psychological harm for those persons who have been wrongfully accused. Zakireh Aff. ¶14; Ziv. Aff. ¶15.

Msgr. Shamleffer, a seasoned pastor, canon law professor, and former Judicial Vicar of the Archdiocese, explains why wholesale production of the names complainants' and accused persons violates the fundamental rights and dignity of such persons as protected by the bill of rights within canon law and by sound Catholic pastoral practices.

> 45. Every Catholic has the right to a good name and reputation. A reputation or the public opinion that is held of someone is according to St. Thomas Aquinas, "the most precious temporal asset that a person possesses, the injury that can be considered more serious than the theft itself, since it is greater than material wealth". *Cf.* S.Th., II q.73.
>
> 46. "No one is permitted to harm illegitimately the good reputation which a person possesses or to injure the right of any person to protect his or her own privacy." CIC, c. 220.
>
> * * *
>
> 48. The requirement to respect a good reputation and the duty to respect each person's right to privacy flows out of natural law requirements and is codified in canon law.

Exhibit 18

> 49. Two rights are expressed in canon 220–both in a passive manner. The first is a right to a good reputation, which is not to be damaged unlawfully. The second is the right to privacy, which is not to be violated. Both rights are basic human rights; the first is expressly listed in *Gaudium et Spes* 26. It is listed in *De Populo Dei* (c. 32) and in the *Lex Ecclesiae Fundamentalis*; and the wording of the first part of the canon is taken from canon 20 of the latter. The second, to privacy, is a fundamental right listed in *De Populo Dei* (c. 33) but not found in the *Lex Ecclesiae Fundamentalis*. In its earlier form it referred specifically to privacy in correspondence and other personal matters, but here it is expressed in a more general form.
>
> * * *
>
> 51. A good reputation need not be based on fact in order to be enjoyed. The 1917 Code made a distinction between infamy and law – a legal state even though a person's reputation had not suffered in public and manifest infamy, referring to the loss of reputation for serious reason. The 1983 Code has dropped the sanction of infamy but retains the recognition that some people can lose their reputation with juridic effects.
>
> 52. The canon prohibits unlawfully damaging a good reputation that a person may enjoy. Such a reputation may be lawfully damaged if there is a cause, for the reputation may be false. Yet, just because a reputation is not warranted is not sufficient to damage it; criminal action or other grave sin, admonition by Church authorities, and obstinacy in the wrongful activity would be required for someone to intervene actively with the purpose of damaging another's reputation. CIC, cc. 1341; 1717, §2.

Ex. D, Shamleffer Affidavit, ¶¶ 45-46, 48-52.

He further explains that those who come forward to the Archdiocese with complaints of abuse and those who are accused "expect" the Church to "respect their confidentiality." *Id.*, ¶ 52. Indeed, the truth seeking function of the resulting investigation is enhanced by respecting and protecting the privacy of these individuals. *Id.*, ¶ 54. Furthermore, both the complainant and the accused person may look to the Archdiocese for pastoral counseling that itself requires that it not produce their names. *Id.*, ¶ 55.

Exhibit 18

Msgr. Shamleffer concludes:

> 57. It is because of the rights of persons to a good name and reputation and their rights to privacy that the Archdiocese strongly opposes any requirement to disclose the names of individuals who come to the Archdiocese complaining that they have been sexually abused or otherwise victimized and also the names of those whom they have accused. This opposition is based in the law of the Church and also in pastoral considerations and care for such persons.

Id., ¶ 57.

3. ***Burden On and Entanglement With Religious Exercise.*** No explanation is required to recognize that forced disclosure of names associated with accusations of sexual abuse—whether those of the complainants or those of the accused persons—would both burden the exercise of religion by the complainants, the accused persons, the Archbishop, and the Archdiocese itself and would also constitute gross governmental entanglement with confidential church communications. Indeed, the Archbishop is charged with overseeing that these canonical and pastoral norms are to be observed—not destroyed. *Id.*, ¶¶ 9, 34, 35, 42.

4. ***Names of Unrelated Complainants and Accused Persons Are Not "Relevant to the Subject Matter Involved in the Pending Action."*** Before reaching the religious liberty issues discussed below, the Court should inquire whether the names themselves fall within the requirement of Rule 56.01(b) that they be "relevant to subject matter involved in pending action." It is difficult to see how they could be when plaintiff herself brings this litigation pseudonymously.

Walence v. Treadwell, 165 F.R.D. 43 (E.D. Penn. 1995) is "on all fours" with the issue here. Traci Walence alleged she was a victim of sexual harassment constituting a violation of Title IX and supporting several claims sounding in tort. She, accordingly, sued her alleged harasser and West Chester University. Ms. Walence served a request for production seeking all

Exhibit 18

University documents relevant to complaints *for a five year period* of "sexual discrimination, sexual assault, stalking, [and] retaliatory conduct," including those relating to:

> a. Your hearing of the Complaint;
>
> b. the facts underlying the Complaint;
>
> c. the procedures You followed in processing the Complaint;
>
> d. the explanation of rights You gave to the complaining party or parties;
>
> e. Your investigation of the Complaint;
>
> f. Your response to acts of retaliation against the complainant;
>
> g. Your Communications with the complainant, the accused or any other student, faculty, or staff of the University, including the accused, his union representative or attorney, regarding the Complaint;
>
> h. Your final resolution of the Complaint, and any action taken or punishment imposed as a result of such resolution.

Id., 165 F.R.D. at 46.

Just as here, the Defendants offered a summaries of the complaints **but redacted the names of the complaints and of those accused**. *Id.* Walence moved to compel. The University responded, arguing "the importance of confidentiality in sexual harassment procedures." The Court itself recognized that confidentiality was indeed important if the University (also was to "effectively address sexual harassment complaints" and held that "the identities of both complainants and individuals accused of sexual harassment at West Chester University should be kept confidential." *Id.*, at 47.

5. ***Fishing Expedition.*** The elephant in plaintiff's argument, of course, is that the names of complainants and accused persons is not about proving her case, it is about providing more business opportunities for her counsel and for SNAP. "Discovery is not intended to be a fishing expedition." 8 Wright, Miller & Marcus, Federal Practice and Procedure, §2008

Exhibit 18

(2010) n. 32 (citing *Martinez v. Cornell Corrrections of Texas*, 229 F.R.D. 215 (D. N.M. 2005)). "Relevancy" is "not so liberal a rule as to allow a party to roam in shadow zones of relevance. *Id.*, n.38 (citing *In re Fontaine*, 402 F.Supp. 1219 (E.D. N.Y. 1975)).

6. ***Compelling Disclosure of the Names of Complainants and Accused Persons Violates the First Amendment Doctrine of Church Autonomy.*** Missouri courts have deep respect for religious liberty and have construed the state constitutional protection of religious freedom as even more restrictive on the government than the federal constitution. *Paster v. Tussey*, 512 S.W.2d 97, 101-02 (Mo. 1974). In the seminal case, *Gibson v. Brewer*, 952 S.W.2d 239 (Mo. 1997), the Missouri Supreme Court recognized that it is particularly problematic for the state to become entangled with certain subject matters over which the church is sovereign. It, in fact, proscribed the tort of ecclesiastical negligent supervision precisely to "preserve[] 'the autonomy and freedom of religious bodies." Protected ecclesiastical subject matters include "religious doctrine, polity, and practice," "hiring, ordaining, and retaining of clergy," "select[ion of] clergy," and operation of "ecclesiastical tribunals." Id. at 247.

The First Amendment Freedom of the Church (also known as the Doctrine of Church Autonomy) acts as a structural restraint upon government power, *see* Carl Esbeck, *The Establishment Clause as a Structural Restraint on Governmental Power*, 84 Iowa L. Rev. 1, 55-56 (1998).

> If the law is to order two entities ("separation of church and state"), the law must first recognize the existence of both entities. The juridical consequence is that the status of religious entities is acknowledged by the Establishment Clause, and a sphere is reserved in which religious entities may operate unhindered by government . . .

Id. The United States Supreme Court resoundingly endorsed and applied a subset of the First Amendment Doctrine of Church Autnomy, known as the Ministerial Exception, in its unanimous

Exhibit 18

2012 decision, *Hosanna-Tabor Evangelical Lutheran Church and School v. EEOC*, 565 U.S. __, 132 S.Ct. 694. One of the hallmarks of Church Autonomy law is that its applications involves no balancing test.

Here, the ecclesiastical subject matter is the names of complainants and accused persons when linked both to accusations of clerical sexual abuse and to the outcome of Archdiocese's response to such accusations. Such individuals, their privacy, and their confidences are all protected by canon law and pastoral considerations as Msgr. Shamleffer explains.

Woven throughout the body of First Amendment Church Autonomy law is the repeated judicial recognition that government is structurally restrained from becoming entangled with church communications. This is because "a church in its collective capacity must be free to express religious beliefs, profess matters of faith, and communicate its religious message," *Rweyemamu v. Comm'n on Human Rights & Opportunities*, 98 Conn. App. 646, 663 (Conn. App. Ct. 2006) (quoting *Petruska v. Gannon Univ.*, 462 F.3d 294, 306-07 (3d Cir. 2006)) and because forced disclosure of otherwise confidential church communications would have a chilling effect on candid and open church communications, *E.E.O.C. v. Catholic University of America*, 83 F.3d 455, 466 (D.C. Cir. 1996) (recognizing that the "very process of inquiry" inherent in litigation and discovery would affect how a religious organization governs itself in the future). Accordingly, civil courts have repeatedly applied the First Amendment to protect religious societies from disclosing the confidential communications that constitutes the practice of their faith. *See, e.g., Rayburn v. General Conference of Seventh-Day Adventists*, 772 F.2d 1164, 1171 (4th Cir. 1985) ("the very process" of government inquiry infringes on "rights guaranteed by the Religion Clauses").

Exhibit 18

In *National Labor Relations Bd. v. Catholic Bishop of Chicago*, 440 U.S. 490 (1979), the United States Supreme Court interpreted the jurisdiction of the NLRB as not extending to Catholic minor seminaries and schools because of First Amendment Church Autonomy concerns. This opinion contains very specific discussion of the type of constitutionally offensive discovery that would accompany such jurisdiction. The opinion includes an appendix, *id.* at 507-08, that gives examples of the type of discovery "which may impinge on rights guaranteed by the Religion Clauses." *Id.* at 502, n.10. Two of these, put to a priest deponent are: "how many liturgies are required at Catholic parochial schools?" and "how many Masses are required at Catholic parochial high schools?" *Id.* at 507-08.

After the court's discussion of the "intrusiveness" of NLRB jurisdiction, *see id.* at 498-99, the court then wrote about discovery:

> The resolution of such charges by the Board, in many instances, will necessarily involve inquiry into the good faith of the position asserted by the clergy-administrators and its relationship to the school's religious mission. **It is not only the conclusions that may be reached by the Board which may impinge on rights guaranteed by the Religion Clauses, but also the very process of inquiry leading to findings and conclusions of law.**

Id. at 502.

The First Amendment precludes government jurisdiction over claims and related discovery that relates to preaching, *Tilton v. Marshall*, 925 S.W.2d 672 (Tex. 1996); congregational dialogues and church literature distribution, *Bryce v. Episcopal Church in the Diocese of Colorado*, 289 F.3d 648 (10th Cir. 2002); statements about the discipline of a priest, *Hiles v. Episcopal Diocese of Massachusetts*, 773 N.E.2d 929 (Mass. 2002); statements about a parishioner, *O'Connor v. Diocese of Honolulu*, 889 P.2d 261 (Hawaii 1994); and statements protected as confidential under Roman Catholic Canon Law, *Cimijotti v. Paulsen*, 230 F.Supp. 39, 41 (N.D. Iowa, 1964).

Exhibit 18

> The law withdraws from the State any exertion of restraint on free exercise of religion. The freedom of speech does not protect one against slander, yet a person must be free to say anything and everything to his Church, at least so long as it is said in a recognized and required proceeding of the religion and to a recognized official of the religion. [T]he person must not be prohibited, by fear of court action either civil or criminal against his person or property, from actually making the communication.

Id. See also Purdum v. Purdum, 301 P.3d 718 (Kan. App. 2013).

The First Amendment protects *from discovery* ecclesiastical tribunal records, *id.*; *Ryan v. Ryan*, 419 Mass. 86, 642 N.E. 2d 1028 (1994); membership files, *Turner v. The Church of Jesus Christ Latter-day Saints*, 18 S.W. 3d 877, 896 (Tex. App.—Dallas 2000, no writ); church financial records, *Gipson v. Brown*, 295 Ark. 371, 749 S.W.2d 297 (1988); and even matters as seemingly innocuous as demographic information regarding a ministry's employees, *Southwestern Baptist Theological Seminary*, 651 F.2d 277 (5th Cir. 1981).

7. ***Compelling Disclosure of the Names of Complainants and Accused Persons Violates the Missouri Religious Freedom Restoration Act, Mo. Rev. Stat. § 1.302 and the First Amendment Free Exercise Clause.*** Missouri is one of fifteen states with a Religious Freedom Restoration Act ("Missouri RFRA"). Mo. Rev. Stat. §1.302. Under Missouri RFRA, if the Court's order burdens the religious exercise of complainants, accused persons, the Archdiocese, and Archbishop Carlson as shown in Msgr. Shamleffer's affidavit, the state must show a compelling governmental interest unless the order is a rule of general applicability. *Id.* The order is not generally applicable. It called for and received the Court's evaluation individualized for the Defendants in this case. *See* discussion of individualized assessment in *Employment Div. v. Smith*, 494 U.S. 872, 884 (1990).

As described earlier, it is difficult to identify any state interest, much less a compelling one, for ordering the Defendants to produce the names in question. "The compelling interest

Exhibit 18

standard . . . is not "watered down" but "really means what it says." *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993). Even if the state's interest were clear, it cannot be compelling governmental interest because the state has inoculated itself from liability and product in identical circumstances by preserving the doctrine of sovereign immunity. Mo. Rev. Stat. § 537.600. It is of note that Missouri's preservation of sovereign immunity for government institutions caring for children continues even though it is well established that Missouri governmental institutions have substantial continuing problems of permitting the children in their care to be sexually abused. *See, e.g.*, Associated Press, *Missouri: Teacher abuse investigation spurs call for change* (October 31, 2007) ("In Missouri, 87 licensed teaches lost their credentials from 2001 through 2005 because of sexual misconduct . . ."); Cynthia Newsome, *An alarming number of Kansas City Missouri Public School teachers are being accused of abuse*, Scripps Media (November 26, 2012) (In the 2011 school year, the Department of Family Services received complaints of child abuse about 34 KCMSD teachers; and 34 more during the first semester of 2012). The government's interest "cannot be regarded as protecting an interest 'of the highest order' . . . when it leaves appreciable damage to that supposedly vital interest unprohibited." *Lukumi*, 508 U.S. at 547. For similar reasons, names should not be disclosed under First Amendment free exercise jurisprudence.

C. The Sunset Provision Destroys the Purpose of the Protective Order.

1. Under Supreme Court Rule 56.01, the purpose of a protective order is to protect "a party or person" from annoyance, embarrassment, oppression, or undue burden or expense.

2. Defendants respectfully request modification of the Court's amendment to the Protective Order. The Protective Order signed by the Court recognizes that "sensitive, personal, privileged, confidential or proprietary information" may be exchanged between the parties in this

Exhibit 18

case and makes that material subject to confidentiality protection—including, for instance, documents or other materials containing the Plaintiff's true name. *See* Nov. 15, 2013 Protective Order ¶2. Because of its sensitive nature, the Order provides that Confidential information "may be used exclusively in connection with this case" and may be disclosed only to certain categories of designated persons in connection with preparing this case for trial. *Id.* ¶5.[2]

However, the Court also wrote into the Acknowledgement to be signed by those persons receiving Confidential information that "the obligations under this Acknowledgement will terminate 5 years after the date of final disposition of the above-referenced cause in the above-captioned Court." *Id.* ex. A. If the Court intended to release parties who receive Confidential information from the obligation of keeping it confidential after five years have passed, then the Court should modify the Protective Order to remove that language.[3]

It defies the purpose of having confidentiality protections to remove them after the case is concluded. As the Missouri Supreme Court has put it, "[i]f parties could not rely upon the protective orders and agreements, during and after the trial process, all productions of sensitive material would require litigation to this Court." *State ex rel. Ford Motor Co. v. Manners*, 239 S.W.3d 583, 588 (Mo. 2007) (emphasis added). Thus, in *Ford Motor Co.* the Court held that "the trial court abused its discretion in vacating the non-sharing protective order after the litigation ended," as Ford was relying on an effective protective order to last past the end of the litigation in making confidential productions. *Id.* at 589. "It would be unreasonable to conclude

---

[2] Specifically, confidential material may be given to (a) counsel and their staff; (b) outside consultants/experts assisting counsel; (c) the Court and its staff; (d) deponents and witnesses at depositions, hearing, or trial, or in preparing therefore; and (e) court reporters or others recording or transcribing testimony at depositions, hearing, or trial. Nov. 15, 2013 Protective Order ¶5.

[3] If the Court's intent was otherwise, perhaps to limit the requirement of maintaining the signed Acknowledgements to only five years (as the Court noted its amendment in that paragraph, see ¶9), then Defendants request clarification rather than modification.

that Ford would have insisted on this protection and allowed access to their company files if the non-sharing protective order was only to last until the settlement of the dispute." *Id.* at 588.

Indeed, crafting protective orders to ensure that confidentiality is maintained after the action is resolved, for instance by ensuring the return of confidential material, is by far the common rule. *See Poliquin v. Garden Way, Inc.*, 989 F.2d 527, 535 (1st Cir. 1993) ("Where the district court does protect material during discovery, it is common to provide, as the magistrate judge did here, for post-trial protection . . . ."); *State ex rel. State Farm Mut. Auto. Ins. Co. v. Bedell*, 719 S.E.2d 722, 742 (W. Va. 2011) (noting that "with a protective order comes, also, the incorporation of terms to safeguard the documents it embraces," surveying procedure from numerous courts, and finding clauses requiring destruction or return of confidential documents after the case ends is a "widely-accepted practice" and "is a proper provision to incorporate into a protective order to ensure the continued protection of the documents subject to its terms").

Putting a prospective expiration date on a protective order runs counter to many important policies. First, protective orders like the one here, which exists to protect against the public disclosure of highly sensitive material, are granted precisely because information needs to be sheltered from the public eye. Making a protective order expire in five years' time does not "protect a party or person from annoyance, embarrassment, [or] oppression," Mo. R. Civ. P. 56.01(c), but rather (at most) merely delays those harms to be visited another day and therefore does not serve the purposes of the rule.

Second, it would defeat the purpose of limiting the Confidential information to "be used exclusively in connection with this case," Nov. 15, 2013 Protective Order ¶5, to allow disclosure after the case has ended. *See Reis v. Iowa Dist. Court for Polk Cnty.*, 787 N.W.2d 61, 67 (Iowa 2010) ("The limitation on use of these documents to the 'preparation for and the conducting of

Exhibit 18

this proceeding' would be meaningless were the protective order to expire upon dismissal or judgment. To the contrary, there is no permissive use for the documents after dismissal.").

Third, it would frustrate the important goal of encouraging disclosure by undermining the parties' confidence that sensitive material will be protected. "If the parties were free to disclose confidential information upon dismissal of a case, protective orders would cease to fulfill their intended purpose which is to encourage full disclosure of all relevant information." *Yates v. Applied Performance Technologies, Inc.*, 205 F.R.D. 497, 501 (S.D. Ohio 2002); *accord Ford Motor Co.*, 239 S.W.3d at 588 ("The Court agrees that discovery should be conducted in the most practical and cost efficient way possible. However, failure to respect the production of documents subject to protective orders would hinder, not further, this goal.") (emphasis added); *Reis*, 787 N.W.2d at 67 (justifications for protective orders "continue past dismissal" because such an assurance is necessary to ease discovery); *Poliquin*, 989 F.2d at 535 (recognizing that "the lubricating effects of the protective order on pre-trial discovery would be lost if the order expired at the end of the case").

And there is no rationale for limiting confidentiality protections to five years in this case. The Court should have no concern about over-designation of Confidential material, as the Protective Order contains a procedure for the parties to bring disagreements about whether information is properly designated "Confidential" before the Court for resolution. Nov. 15, 2013 Protective Order ¶10. Thus, the only information that will have confidentiality protection at the end of this case is either (a) that which the parties agree is properly designated Confidential because it is "sensitive, personal, privileged, confidential or proprietary information," *id.* ¶2, or (b) that which the Court has otherwise expressly declared to be properly designated Confidential.

Exhibit 18

Likewise, should any third party believe it is entitled to Confidential materials in five years' time (or sooner), it can always make a request to intervene and to ask for those materials. If entitled to do so, the third party would get them; if not, it wouldn't. Of course, should either of the current parties believe in the future that some specific piece of Confidential information should no longer be protected, they too could ask the Court to modify the Order and the issue could easily be teed up that way.

To be clear, Defendants are not aware of any piece of the Confidential information the Court has already agreed should be subject to protection that would be prudent to make public in five years — but if anyone felt that there was such information, clearly the way to proceed is for the interested party to articulate such a request at that time, not for the Court to preemptively withdraw confidentiality protection for all Confidential information, *en masse*, in five years. *See, e.g.*, *Yates*, 205 F.R.D. at 501 ("if Plaintiffs wished to use deposition testimony subject to that [protective] order in support of their memorandum in opposition, they should have sought modification of that order from the issuing court," rather than viewing it as having expired after the prior case); *Poliquin*, 989 F.2d at 535 (the "common" practice is to provide for ongoing protection in the order, since "a protective order, like any ongoing injunction, is always subject to the inherent power of the district court to relax or terminate the order, even after judgment"); *Pincheira v. Allstate Ins. Co.*, 190 P.3d 322, 337 (N.M. 2008) (explaining in trade secret case that "protective orders should expire only upon an affirmative order of the trial court"; such a "precaution will avoid the confusion that was caused by the automatic expiration provision of the protective order"). An affirmative order upon application of an interested party is the normal, better, and safer way to terminate confidentiality for such sensitive material, should that ever be warranted.

Exhibit 18

Finally, the Protective Order's decision to render unprotected all of both sides' Confidential information, simply because five years have passed since the end of the case, rests on no showing of good cause. *See* Mo. R. Civ. P. 56.01(c). No analysis of whether Confidential information should become public could be undertaken now because, at this point in time, the parties have not yet exchanged all of the discovery, or had any of the depositions and other testimonial proceedings, possibly including trial, in which the sensitive Confidential information will be raised. It cannot possibly be predicted at this moment that any piece of the Confidential information in this case, much less all of it, would be safe to disclose in five years. *See State ex rel. Ford Motor Co. v. Manners*, 239 S.W.3d 583, 586 (Mo. 2007) (abuse of discretion for protective order to be "clearly against the logic of circumstances").

As just one example, Plaintiff, doubtless, would oppose public disclosure of her confidential information (her name) five years after this suit ends. Defendants certainly have no plans or desire to do so. Yet under the present Order, every witness who saw or heard her name at a deposition, every court reporter or stenographer in attendance, and every expert or consultant who learned it during the case will be free to shout it from the rooftops five years after the case ends, simply because five years have passed. Unless the Order is modified, that will be true for every single piece of Confidential information in this case, no matter how sensitive.

Thus, Defendants respectfully request that the Court remove the handwritten language from the Protective Order's Acknowledgement.

VII. CONCLUSION AND REQUEST FOR RELIEF.

For the reasons stated in this tender and motion, Defendants respectfully request that the Court finds and orders:

Exhibit 18

A. Defendant has substantially complied with the Court's May 13, 2013 and November 15, 2013 orders, and the Court lifts the current risk of sanction stated in that order;

B. The Court finds that the purposes for the production of the Matrix—possible proof of notice and issues related to punitive damages—is satisfied without producing names of complainants and accused individuals and Defendants need not produce such;

C. The Protective Order previously entered by the Court is hereby made permanent and the five year sunset provision is hereby removed;

D. The Court denies John Doe's motion to intervene as moot because the names shall not be released;

E. And for such other and further relief as the Court deems just and proper.

Respectfully submitted,

CARMODY MacDONALD P.C.

By: 

Gerard T. Carmody, #24769
David P. Stoeberl, #46024
Ryann C. Carmody, #56831
120 South Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone (314) 854-8600
Facsimile (314) 854-8660
gtc@carmodymacdonald.com
dps@carmodymacdonald.com
rcc@carmodymacdonald.com

and

Exhibit 18

LEWIS ROCA ROTHGERBER LLP
L. Martin Nussbaum
Scott M. Browning
William Voit
Telephone (719) 386-3000
Facsimile (719) 386-3070
mnussbaum@lrrlaw.com
sbrowning@lrrlaw.com
wvoit@lrrlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

On 16th day of December, 2013, a copy of the foregoing was served via hand delivery and email on:

Kenneth M. Chackes
M. Susan Carlson / Nicole E. Gorovsky
Chackes, Carlson & Halquist, LLP
908 Olive Street, Suite 200
St. Louis, Missouri 63101
kchackes@cch-law.com

and via email on:

Jeffrey R. Anderson
Jeff Anderson & Associates, P.A.
E-1000 First National Bank Building
332 Minnesota Street
St. Paul, Minnesota 55101
jeff@andersonadvocates.com

Exhibit 18

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-Profit Corporation, ARCHBISHOP ROBERT J. CARLSON of the Archdiocese of St. Louis, and FATHER JOSEPH Ross	)	Div. 1
	)	
Defendants.	)	

PLAINTIFF'S MOTION FOR SANCTIONS AND PLAINTIFF'S RESPONSE TO DEFENDANTS MOTION FOR MODIFICATION OF ORDER

After seven months, four hearings, several motions to reconsider, and after being threatened with sanctions, Defendants not only blatantly failed to comply with this Court's orders of May 13, 2013 and November 15, 2013, they brazenly seek yet again to modify the orders. Defendants show deliberate disregard for the authority of the Court. Plaintiff opposes Defendants' motion to modify and respectfully requests that the Court sanction Defendants for their discovery abuses and blatant disregard for this Court's authority by entering an order striking the pleadings of Defendants, entering a default judgment against Defendants, and prohibiting Defendants from presenting any evidence in defense of Plaintiff's claims against them.

I. PROCEDURAL HISTORY[1]

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.

Since that time, discovery has been ongoing. On March 5, 2013, Plaintiff filed a motion to compel. Plaintiff sought to compel the Defendants to disclose information in response to the following interrogatories:

> 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:**
>
> 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 motion was argued on May 13, 2013, and Defendants were ordered to disclose documents in this case. Specifically, the Court stated the following:

> The Court grants in part Plaintiff's motion to compel discovery of

[1] In their Motion to Modify, Defendants include a few paragraphs under the heading "Plaintiff's allegations." (D.Motion 1-2). What follows includes a number of statements that are absolutely not Plaintiff's allegations. They are Defendants' conjectures and possibly their proposed defenses. Labeling this section as "Plaintiff's allegations" is misleading at best. Moreover, Defendants' statement that "SNAP routinely publishes discovery from sex abuse litigation," seems to be an attempt to scare the Court into believing that Plaintiff and her attorneys will violate the protective order by providing information to SNAP. This insinuation, coupled with Defense counsel's argument in Court that Plaintiff's counsel merely wants to solicit new clients is beyond the pale.

> 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 outcome of the complaint.

The Court gave Defendants 60 days to comply with the above order. On June 28, 2013, Defendants filed a Motion for Partial Reconsideration of Order to Compel. In the motion, Defendants argued that the Court's order was overbroad, unduly burdensome, and that it invaded the rights of third parties. Defendants then failed to comply with that order and Plaintiff filed a motion for contempt and/or sanctions against Defendants.

Defendants Motion to Reconsider and Plaintiff's Motion for Sanctions were taken up in a hearing held on November 15, 2013. Following the hearing, and after considering all of the Defendant's arguments, the Court ordered that as to clergy employees, the May 13, 2013 order stood as written. (The Court modified the extent of the discovery for non-clergy employees). The Court added that Defendants had 30 days to produce the information "or Defendants' pleadings will be stricken."

During the week before the discovery was due to be produced, Defendants hired new counsel who then called for a hearing to reconsider the issues for the third time. Defendants failed to file a motion, but merely showed up at the Courthouse and asked the Court for a hearing. Without telling Plaintiffs what their arguments would be, Defendants scheduled a hearing for December 13, 2013.

At the December 13, 2013 hearing, Defendants again asked the Court to reconsider its discovery order. Among other things, Defendants' specifically requested that they not be required to reveal names of complainants or of accused individuals. The Court refused, and

warned Defendants that if they did not "substantially comply" with the Court's order they risked having their pleadings stricken.

On December 16, 2013, the last day for compliance, at 4:30pm, Defendants provided what they call a "matrix" to Plaintiffs' counsel. The "matrix" fails to identify a single accused abuser or any complainant. The "matrix" further fails to describe the occurrences of abuse other than to say on every single entry, "alleged sexual abuse of a minor." The "matrix" further fails to describe the outcomes of the allegations other than in generic terms like, "made report," or "unsubstantiated."

Even more puzzling, Defendants filed a Motion to Modify this Court's order which explained the "matrix" as being incomplete because not all of the parishes and agencies of the Archdiocese responded to their requests for information.

II. ANALYSIS

Despite the fact that it fails to comply with this Court's orders in just about every way, Defendants allege that their "matrix" constitutes substantial compliance with the Court's previous orders. Moreover, Defendants manipulatively attempt to divert the Court's attention from their failure to comply with presentations of other previously ordered untimely disclosures. The "Tender of Documents" section of Defendants' Motion to Modify is equivalent to a child who has been caught stealing who tells his parent that because he did the homework that mom asked him to do two weeks ago, they should ignore his current crime. This Court should not fall for such antics.

Defendants further attempt to lead the Court astray by yet again arguing that they do not have to comply with the Order of a Circuit Court Judge if, in their personal judgment, they

disagree with the order. This shows complete disrespect of the Court, the legal system, and the pursuit of justice.

A. Defendants' Failure To Produce Ordered Discovery Forces This Court To Follow Through With Its Threat Of Sanctions

The Court stated unequivocally on May 13, 2013, that if Defendants failed to provide Plaintiff with information regarding allegations of sexual abuse within the Archdiocese made between 1983 and 2003, their pleadings would be stricken. The Court has no choice but to follow through on its warning.

Missouri Supreme Court Rule 61.01 states that:

> If a party fails to answer interrogatories…or if objections filed thereto which are thereafter overruled and the interrogatories are not timely answered, 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 striking pleadings or parts thereof, or dismissing the action or proceeding or any part thereof, or render a judgment by default against the disobedient party.
> - **(2)** Upon the showing of reasonable excuse, the court may grant the party failing to answer the interrogatories additional time to file answers but such order shall provide that if the party fails to answer the interrogatories within the additional time allowed, the pleadings of such party shall be stricken or the action be dismissed or that a default judgment shall be rendered against the disobedient party.

On November 15, 2013, despite Defendants' failure to provide a reasonable excuse, the Court followed part (2) of the rule. The Court granted Defendants additional time to file answers and stated in the order that if the Defendants failed to follow the order within the additional time allowed, "The Defendants' pleadings shall be stricken." The Court again warned Defendants on December 13, 2013, that if they failed to substantially comply, their pleadings would be stricken.

Defendants failed to substantially comply on December 16, 2013, and therefore, according to Rule 61.01 above, their pleadings **shall** be stricken. The rule does not allow wiggle room if Defendants just decide that they want to argue the issue one more time with bigger and better law firms. It does not allow them to substitute their own judgment for the Court's in determining that the order was not justified. It does not permit Defendants to comply with older orders in an attempt to evade the current one. It does not support the concealment of whichever parts of the discovery that Defendants deem uncomfortable for them. Defendants have put the Court in the position of being forced to sanction defendants lest becoming weak, irrelevant and ineffective.

The trial Court is vested with broad discretion to control discovery. Goede v. Aerojet Gen. Corp, 143 S.W.3d 14, 16-19 (Mo.App.E.D. 2004). "The purposes of discovery are to eliminate concealment and surprise, to aid litigants in determining facts prior to trial, and to provide litigants with access to proper information with which to develop their respective contentions and to present their respective sides on issues framed by the pleadings." Id. "**Discovery is not intended to be a battleground where victory is awarded to the most clever and combative adversary**." Id.

Rule 61.01(a) provides that "any failure to act described in this Rule may not be excused on the ground that the discovery sought is objectionable," if objections filed thereto are thereafter overruled. Moreover, "an evasive or incomplete answer is to be treated as a failure to answer." Mo.Sup.Ct. R. 61.01 (a).

The particular sanction of striking a party's pleadings is an acceptable punishment for failure to answer interrogatories. Rule 61.01; Edison v. Edison, 7 S.W.3d 495, 499 (Mo.App.W.D. 1999); Karolat v. Karolat, 151 S.W.3d 852, 857 (Mo.App.W.D. 2004) ("The

imposition of sanctions for a party's failure to participate in discovery, including an order denying the right to cross-examine witnesses and present defenses is a matter within the discretion of the trial court." Citing Edison); Zimmer v. Fisher, 171 S.W.3d 76, 81 (Mo.App.E.D. 2005) ("Fisher provided a few of the requested documents right before trial, but still did not come close to satisfying the discovery request…after reviewing the record and taking into account Defendant's inexcusable, repeated, protracted and contemptuous failure to comply with discovery rules and court orders, we find that the court did not abuse its discretion in granting [Plaintiff's] second motions for sanctions and entering a default judgment."); Geisler v. Geisler, 731 S.W.2d 33, 34 (Mo.App.E.D. 1987); *see also* Anderson v. Arrow Trucking Co., 181 S.W.3d 185, 188 (Mo. App.W.D. 2005) ("The circuit court has much discretion in controlling discovery and determining the proper remedy—including sanctions—for a party's noncompliance.").

In Anderson, the appellate court upheld the trial court's imposition of a judgment against a party for failure to comply with discovery, finding that the defendant had: (1) been evasive and not forthcoming in supplying information and documents requested by the plaintiffs during discovery, and (2) continually failed to comply with discovery despite "reasonable notice" from both the opposing party and the court that such discovery was required. Id. at 185, 188.

As a result of Defendants' blatant disregard of this Court's Order authority, Plaintiff has suffered significant prejudice, to wit:

1. Plaintiff has been deprived of the ability to evaluate information known to exist that would contradict Defendants' claims that harm was not certain or substantially certain to occur by knowingly placing sexually abusive priests into contact with minors.
2. Plaintiff has suffered a significant loss regarding the time necessary to prepare for trial on this issue.

3. Plaintiff has been deprived of the ability to make a prima facie showing of intentional failure to supervise in this case.
4. In their blatant disregard for this Court's authority, Defendants have been and continue to be evasive and fail to be forthcoming in supplying information and documents requested by Plaintiff during the normal course of discovery and pursuant to the discovery rules.

Accordingly, Plaintiff again asks this Court to impose the sanctions that it proclaimed it would impose in this situation. The Court gave Defendants over seven months to comply, four times to be heard on the matter, explicit instructions as to how to comply with its order, and warnings regarding the consequences for failure to comply. Sanctions are not only appropriate here, they are mandated.

B. Plaintiff will again Re-Iterate how Useless The "Matrix" Provided by Defendants is for Discovery

The matrix provided by Defendants contains insufficient information for Plaintiff to conduct meaningful discovery in this case. Plaintiff cannot use it to cross examine, to investigate impeachment, to investigate the patterns and practices of the Archdiocese in handling abuse cases, or to speak with witnesses.

Defendants did not identify which accused employees on the list are clergy and which are not. The matrix does not explain which level of clergy they may be. It is important to know whether an accused abuser is the supervisor involved in this case, the Deacon in charge of handling sexual abuse allegations, or even if he is the Archbishop. All of this information would assist Plaintiff in discovering whether Defendants knew of the harm of sexual abuse and ignored it.

Plaintiff cannot tell from the information provided where the accused employees worked. It is possible that Plaintiff could learn that all pedophile priests were sent to St. Cronan's where Plaintiff was abused, or that all of the St. Cronan's priests were prior abusers. It is further impossible to tell whether many of the abusers had the same supervisor or mentor.

C. Despite the Fact that the Court has Ordered the Disclosure of the Information Multiple Times, Plaintiff will Gratuitously Re-Address Why the Information is Necessary

As explained above, Defendants are not entitled to ignore an unfavorable court order merely because they disagree with it. However, out of an abundance of caution, Plaintiff will gratuitously address why the order was justified in the first place.

The four count petition in this case 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.

Plaintiff is aware that the Missouri Supreme Court, in Gibson v. Brewer, 952 S.W.2d 245 (Mo.banc 1997), held that negligence claims against religious institutions cannot survive. Gibson also forecloses the possibility of any breach of fiduciary claims against religious institutions. Although counsel argues vehemently in these cases that institutions should be liable for Sexual Abuse and Battery under an aiding and abetting theory, the issue is, at best, not yet settled.

This means that in the State of Missouri, victims of sexual abuse, like Plaintiff, must prove intentional failure to supervise claims against religious institutions in order to hold them liable in any way. Only Utah and Wisconsin have a standard this difficult to obtain. All other states allow negligence claims against religious institutions. Plaintiff explains this not to criticize the Missouri Supreme Court, but to demonstrate Plaintiff's high burden of proof in this matter.

In Gibson, the Missouri Supreme Court held a cause of action for intentional failure to supervise clergy is stated if (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, 952 S.W.2d at 248.

The second and third elements of the offense are notable here. Plaintiff must prove that "the supervisor knew that harm was certain or substantially certain to result, and that the supervisor disregarded the known risk" Id. Plaintiff has some information in this case to show that a supervisor existed, that the supervisor disregarded the risk of placing a pedophile priest in a position with access to children, that the supervisor's inaction caused damage, and to show the other requirements of the Restatement (Second) of Torts, section 317 are met (all of the abuse in this case occurred on the premises of the Archdiocese). However, in order to prove that the supervisor knew that harm was certain or substantially certain to result, Plaintiff must rely on sufficient additional discovery.

For nearly 100 years, Missouri law has held that where, as here, motive or intent is at issue, other similar acts by a party are relevant and admissible to show the party's motive or intent in the act at issue.

> The rule is firmly established in the jurisprudence of this state as well as in other jurisdictions that when the question in issue is one involving intent[,] evidence of other acts and conduct of a party of kindred character to the one under investigation, in order to illustrate or establish the intent or motive of the particular act directly in judgment before the court[,] has always been admissible both in criminal as well as civil cases.

Powell v. St. Louis & S.F.R. Co., 229 Mo. 246, 129 S.W. 963, 971 (Mo. 1910) (decedent's intent in boarding a train at issue).

This rule of law has not changed in the intervening years. *See, e.g., Brockman v. Regency Financial Corp*., 124 S.W.3d 43, 51 (Mo.App.W.D. 2004) (V. Howard, J.) ("When intent or mental culpability must be proven, a party's actions towards others tending to demonstrate the intent with which the party may have acted in the present case become relevant.");

Moreover, Missouri follows the equivalent of Federal Rules of Evidence 404 that states that:

> **(b) Crimes, Wrongs, or Other Acts.**
>
> **(1) *Prohibited Uses*.** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
>
> **(2) *Permitted Uses; Notice in a Criminal Case*.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

In other words, Missouri recognizes that one may have to present evidence of the bad acts of witnesses in order to prove *inter alia* intent, motive, knowledge and absence of mistake or lack of accident. State v. Williams, 976 S.W.2d 1, 4 (Mo. Ct. App. 1998); State v. Sladek, 835 S.W.2d 308 (Mo. 1992); State v. Reese, 274 S.W.2d 304 (Mo. 1954).

One way that Plaintiff can show that Defendants knew that harm was certain or substantially certain to result is by presenting at trial, the institutional historical knowledge of the Archdiocese of St. Louis. Accordingly, Plaintiff is required to discover and evaluate this history. As Plaintiff is required to prove intent in the intentional failure to supervise claim, there may be no other way to do it than by showing that the Archdiocesan supervisors were aware that placing

pedophile priests with minors was certain or substantially certain to cause harm.

One reads that last sentence and is tempted to say "well, that's just obvious," but the Plaintiff has the burden of proving it. Plaintiff might be obligated to present witnesses at trial to testify that they too were harmed by pedophile priests, the Archdiocese knew about it, and that cumulatively they represent the Defendants knowledge that harm was certain or substantially certain to result. Granting Defendants Motion to Modify will Foreclose Plaintiff from Making a Prima Facie Case of Intentional Failure to Supervise Clergy

Furthermore, the Church often attempts to refute this element and may do so in this case. Defendants may argue at trial that, at the time of Plaintiff's abuse, they thought that priests who harmed children but then went to treatment programs, as Ross did in this case, were deemed safe to be around children. They may argue that although now they understand the perils of child abuse, during the time of Plaintiff's abuse in the late 1990's they just didn't know about pedophiles and their propensities to repeatedly re-offend. Records regarding prior sexual offenses within the Archdiocese, including offenses by those who completed treatment programs, are necessary to refute these claims.

The requested information is also likely to lead to the discovery of material evidence. It is essential to have the information when deposing church officials.

Plaintiff must know the names of the accused abusers in order to evaluate which ones repeatedly abused after what types of actions were made in attempt to intervene. Also, Plaintiff's St. Louis counsel has been representing victims of sexual abuse locally for almost fifteen years. Counsel is entitled to compare the information provided by defendants with their own records regarding abusive priests.

D. Potential Harm to Victims and Falsely Accused Individuals Will be Avoided in Future Discovery Proceedings and Trial

At the hearing on Tuesday, December 17, 2013, the Court inquired about how the information about allegations of sexual abuse involving other clergy and employees of the Archdiocese would be used by plaintiff's counsel in the prosecution of this case and how potential harm to victims and falsely accused individuals could be avoided. Plaintiff's counsel do not dispute that victims of sexual abuse and falsely accused individuals might be harmed by unwelcome publicity and involvement in legal proceedings, and we assure the Court that such harm can be avoided. This section of plaintiff's brief is based on the experience of attorneys from the St. Louis law firm of Chackes, Carlson & Halquist, LLP, and of attorneys from Jeff Anderson & Associates in Minnesota. Mr. Anderson has been involved in hundreds of clergy sex abuse cases and approximately 10 that went all the way to trial.

Plaintiff and her counsel have absolutely no interest in publicizing the names of any victims or the names of falsely accused individuals and counsel cannot conceive of any circumstances that would result in public disclosure of those names. Plaintiff's counsel will fully cooperate with defendants and the Court to minimize the potential harm to victims from being contacted about their experiences.

As Mr. Chackes and Ms. Gorovsky stated in court on December 17, in a case now pending in St. Louis County Judge Gloria Reno compelled production to plaintiff's counsel a number of letters written by alumni of Chaminade College Preparatory to Fr. Martin Solma, the Provincial of the Marianist Order, pertaining to sexual abuse by two Marianist Brothers who worked at the school. John Doe 116 v. Marianist Province of the United States et al., No. 12SL-CC00653 (Order July 25, 2013) (Attachment A**),** defendants' writ of prohibition denied, No.

ED100252 (Mo. App. E.D. August 20, 2013), defendants' writ of prohibition denied, No SC93660 (Mo. October 29, 2013).

At the request of the Marianists, in order to minimize any unnecessary harm to the former students, Judge Reno allowed defendants to withhold production to plaintiff for a period of ten days, so that the Marianists could send letters to those individuals advising them that they might be contacted by plaintiff's lawyers. (Attachment A**)** defendants' writ of prohibition denied, No. ED100252 (Mo. App. E.D. August 20, 2013), defendants' writ of prohibition denied, No SC93660 (Mo. October 29, 2013).

After that time, plaintiff's counsel were allowed to contact those letter-writers. From the content of the letters it appeared that many of the alumni were more than willing to be contacted.

In this case, Plaintiff's counsel will go even further to avoid unnecessary intrusion into the lives of the complainants. We will follow what has been done by agreement of the parties in several of Mr. Anderson's cases in which the identities of other victims have been disclosed in discovery. After reviewing the information about the complaints, plaintiff's counsel will determine which, if any, complainants they wish to contact. We anticipate that we will need to contact very few of those people. Plaintiff's counsel with then provide counsel for defendants with the names of those complainants to allow defendants to make the initial contact with those individuals. If the complainants are willing to speak with us, we will then contact them and allow them to decide how much involvement they wish to have in further proceedings.

The information plaintiff is seeking is most useful in the depositions of defendants' church officials, about their knowledge that Fr. Ross was dangerous and more generally that pedophiles like Ross were likely to reoffend. In such depositions the names of victims must be known, but their privacy can be completely protected. In many cases litigated by Mr. Anderson,

he prepares what he refers to as a "Doe list," containing the names of victims, with each assigned a number, such as "John Doe 1," "John Doe 2," etc. An example of such a deposition and Doe list is attached hereto as Attachment B (with the redacted Doe list attached as P's Ex. A). The interchange at pages 79-80 shows how the deponent, in that case the Bishop of the Diocese of Tulsa, Oklahoma, was shown the Doe list so that he could be questioned about his knowledge about a particular boy who reported inappropriate behavior by a priest. The Bishop's knowledge of the priest's conduct with that boy was explored at pages 80-86. Then the experiences of another victim were introduced in a similar manner at pages 86-87.

In order to conduct those depositions of defendants' officials plaintiff's counsel clearly needs a lot more than defendants provided on their matrix. We need the detailed information sought in the interrogatories. In addition to the names, other information that defendants were ordered to provide is absolutely essential: "(b) the nature of the complaint, . . . (d) to whom the complaint was made, . . . and (f) the outcome of the complaint." Plaintiff's interrogatories requested that defendants, "Describe each and every allegation of sexual contact with a minor made against any priest and/or employee . . . ." And plaintiff's interrogatory definitions provided:

> "Describe," means to state fully and with particularity including but not limited to stating each date, fact, event, occurrence and identifying each and every individual or document that related to or can testify to said occurrence or allegation.

The next step in discovery and the perhaps simplest way for defendants to comply with this Court's discovery Order will be for defendants to produce the actual documents from which the matrix was developed. Plaintiff's first document to defendants in this case requested:

1. All documents identified or referred to in your Answers to Plaintiff's First Interrogatories to the Archdiocese of St. Louis, including any referenced by Plaintiff or Defendant.

All such documents will be kept completely confidential by plaintiff's counsel pursuant to the protective order.

E. Disclosure of this Information in Other Cases

Many other states with standards much lower than the ones spelled out for intentional conduct in Gibson, have allowed discovery of this information. In Pennsylvania, the Superior Court (equivalent to our Court of Appeals) determined that information regarding abusive priests other than the one specific to the lawsuit was relevant to show the "concealing" of tendencies and that this contributed causally to Plaintiff's own molestation. Samuel Hutchison v. Father Luddy, et. al, 414 Pa. Super 138, 606 A.2d 905, 908 (Pa. App. 1992). In so ruling, the Court rejects arguments of priest-penitent privilege made by the Defendants. Id. It further rejected Defendant's First Amendment argument that canon law dictated that such information was held in a "secret archive," and that Courts were prohibited from violating that. Id. at 908, 910-912.

Numerous Diocese have either been compelled to disclose this information, or did so voluntarily. Following is a list of Catholic Diocese that have **publicly** disclosed lists and information regarding accused priests within their institution and for what reason:

i. Diocese that released information pursuant to Court order

- Diocese of Winona, Minnesota (Attachment D)
- Diocese of Minneapolis/St. Paul (Attachment E)
- Diocese of Joliet, Illinois (Attachment F)
- Diocese of Wilmington, Deleware/Maryland (Attachment C)
- Diocese of San Diego, California (Attachment G)
- Diocese of Albany, New York (Attachment H)
- Diocese of Bridgeport, Connecticut (Attachment I)

ii. Diocese that released information pursuant to Settlement Agreement

- Archdiocese of Los Angeles (Attachment J)
- St. John's Abbey – Benedictines (Attachment K)

iii. Diocese that released information for Unknown Reasons

- Archdiocese of Boston (After an Attorney General Investigation) (Attachment L)
- Archdiocese of Baltimore (Attachment M)
- Diocese of Tucson (Attachment N)
- Capuchin Franciscan – Province of St. Joseph (Attachment O)
- Archdiocese of Chicago (Attachment P)
- Archdiocese of Cincinnati (Attachment Q)
- Diocese of Davenport, Iowa (Attachment R)
- Archdiocese of Detroit (Attachment S)
- Archdiocese of Dubuque, Iowa (Attachment T)
- Diocese of Fort Worth, Texas (Attachment U)
- Archdiocese of Philadelphia (Attachment V)
- Diocese of Phoenix (Attachment W)
- Diocese of Rochester, NY (Attachment X)
- Diocese of Spokane, Washington (Attachment Y)
- Diocese of Springfield, Massachutes (Attachment Z)
- Diocese of Toledo, Ohio (Attachment AA)
- Diocese of Grand Rapids, Michigan (Attachment BB)
- Diocese of Madison, Wisconsin(Attachment CC)
- Diocese of Lacrosse, Wisconsin (Attachment CC)
- Diocese of Superior, Wisconsin (Attachment CC)
- Diocese of Manchester, New Hampshire (Attachment DD)
- Diocese of Monterey, California (Attachment EE)
- Diocese of Orange, California (Attachment FF)
- Diocese of Peoria, Illinois (Attachment GG)
- Diocese of Portland, Maine (Attachment HH)
- Diocese of St. Petersburg, Florida (Attachment II)
- Diocese of Brooklyn, New York (Attachment JJ)
- Archdiocese of New York, New York (Attachment KK)
- Diocese of Rockville Centre (Long Island), New York (Attachment LL)
- Archdiocese of Newark, New Jersey (Attachment MM)

iv. Diocese that released information Pursuant to Bankruptcy Proceeding Orders

- Archdiocese of Portland, Oregon (Attachment NN)
- Diocese of Fairbanks, Alaska (Attachment OO)
- Oregon Province of Jesuits (Attachment PP)
- Archdiocese of Milwaukee (Attachment QQ)
- Diocese of Gallup, New Mexico (Attachment RR)

The Boy Scouts of America were also ordered by the Oregon Supreme Court to publish information regarding employees expelled for sexual abuse. Doe v. Corp. of the Presiding

Bishop of the Church of Jesus Christ of Latter-Day Saints, 352 Ore. 77, 280 P.3d 377 (Ore. 2012). (Attachment SS).

F. Defendants Arguments are Meritless

Defendants' argument that "compelling disclosure of the names of complainants and accused persons violates the First Amendment Doctrine of church autonomy" is frivolous. (D.Motion 13). Although Missouri respects religious liberty, it does not do so to the point of protecting churches from all scrutiny. Gibson v. Brewer explicitly allows for intentional claims against the church. Gibson at 248 It requires that Plaintiff prove intent in these cases, which means by analysis, Gibson forces the release of this information.

If Defendants were correct in their analysis of Gibson, no one could ever get the name of any wrongdoer in the church – including ones who committed intentional crimes of fraud, leaving the scene of an accident, murder, etc. Clearly this reasoning gets ridiculous.

Defendants' use of the Hosanna-Tabor v. EEOC, 132 S.Ct. 694 (2012) case is also completely misguided here. In Hosanna-Tabor, the Supreme Court determined that there was a ministerial exception – meaning that the Court will not disturb the manner in which the church deals with "called" employees. Id. However, there is no doubt that had the Plaintiff in Hosanna-Tabor been brutally raped by others in her church hierarchy, the criminal and civil courts would be permitted to be heavily involved. The case is not comparable to the present case in any way. The Church is not an island where they can be free from intervention regarding intentional acts. Defendants' arguments in this regard provide a creepy window into the Church's thinking that allowed thousands of children to be brutally raped in the first place.

Such callousness toward the consequences of intentional abusive acts is also evidenced in Defendants' arguments that there is no compelling interest under Missouri Religious Freedom Restoration Act for ordering the disclosue of the information sought here. How quickly Defendants brush aside the compelling state interest in the prevention of child abuse. State v. Helgoth, 691 S.W.2d 281, 285 (Mo.banc 1985); State v. Liberty, 370 S.W.3d 537 (Mo. 2012) *citing* New York v. Ferber, 458 U.S. 747, 756, 102 S. Ct. 3348, 73 L. Ed. 2d 1113 (1982) ("The prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance.").

Lastly, Defendants cite the Missouri Doctrine of Sovereign Immunity to support their argument that Missouri allows bars on certain lawsuits. (D. Motion 17). Defendants, however, fail to acknowledge that government entities, like schools with "sex abuse problems" are only immune, like religious institutions, from negligence claims, not intentional ones as we have here. *See* §537.610.

G. The Sunset Provision is Not an Urgent Issue

Although Defendants argue that the sunset provision of the protective order issued in this case should be removed, they have five years to petition the court to do so. This issue is not urgent.

H. The Potential Intervenor is Untimely

John Doe filed a Motion to Intervene in this case on December 13, 2013. According to John Doe's affidavit which was attached to his motion to intervene, Doe learned about the Court's order on November 27, 2013. Doe offers no explanation for why he waited two weeks to file his motion to intervene. Moreover, when Doe filed his motion to intervene, he called the

motion up for hearing on Tuesday December 17, 2013 – one day after the discovery was due to be produced in this case.

According to §507.090 RSMo, the "court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties." Here, Defendants have failed to comply with the Court's discovery orders for over seven months. They barely escaped being held in contempt one month ago. Trial is set in this case in February 2014 – two months away. Further delay in the discovery process will seriously prejudice Plaintiff in her efforts to be prepared for trial in this matter. Therefore, this Court should use its discretion to find the intervention attempt untimely and prejudicial.

I. The Potential Intervenor Does not have a Right to Intervene on Behalf of Others

First, it is important to note that although the Motion to Intervene is written to sound like it is presenting arguments for all priests of the Archdiocese and all victims who have ever reported abuse to the Archdiocese, the reality is that Lisa Pake, intervention counsel, represents one client – John Doe. Pake does not have the authority to make arguments on behalf of anyone other than John Doe. All arguments which seemingly attempt to represent entire classes of individuals should be disregarded.

The cases cited by Pake in her Response to Plaintiff's Response to John Doe's Motion to Intervene illustrate this point. In Rosado v. Bridgeport Roman Catholic Diocesan Corporation, seven priests together hired representation to intervene in a case where their names may be disclosed as potential abusers. 758 A.2d 916 (Conn.App. 2000). To be clear, one attorney represented the seven priests involved.

In Police Retirement System of St. Louis v. City of St. Louis, 763 S.W.2d 298 (Mo.App.E.D. 1988), which Doe cites to support his claim that he can intervene on behalf of

every accused priest in the Archdiocese, the parties were certified as a class. (Doe Motion 5) Doe and his counsel have made no attempt to certify a class in this case, and it is too late to do so.

Doe cites Milton Construction and Supply Co. v. MSD, to support the argument that he can represent a class 308 S.W.2d 769 (Mo.App. St.L 1958) (Doe motion 5). However, the interveners in Milton applied to be a class and requested certification. Doe's failure to do so here is prohibitive.

J. The Potential Intervenor Does not have a Right to Intervene on his Own Behalf

As argued in her previous Response to Doe's Motion to Intervene, Plaintiff does not believe that Doe has a right to intervene.

According to Missouri Supreme Court Rule 52.12, in order for Doe to intervene as a matter of right, he must meet the following requirements:

> ***(a) Intervention of Right.*** --Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute of this state confers an unconditional right to intervene or (2) when the applicant claims an interest relating to the property or transaction that is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest, unless the applicant's interest is adequately represented by existing parties.

Doe does not allege that any "statute of this state confers an unconditional right to intervene." "In the absence of a statute conferring an unconditional right to intervene, an applicant seeking intervention must file a timely motion showing three elements: "(1) an interest relating to the property or transaction which is the subject of the action; (2) that the applicant's ability to protect the interest is impaired or impeded; and (3) that the existing parties are inadequately representing the applicant's interest." McMahon v. Geldersma, 317 S.W.3d 700, 705 (Mo. App. W.D. 2010)

Doe cannot show that his ability to protect his interest is impaired or impeded, or that the existing parties are inadequately representing Doe's interests. The Defendants in this matter

argued repeatedly regarding the privacy rights of the priests who would be affected by the discovery order. In their Memorandum in Response to Plaintiff's Motion to compel, filed on May 6, 2013, Defendants argued that Plaintiff's request was a "fishing expedition." They further argued at the hearing held on the matter, that such discovery would violate their employees' privacy rights. On May 13, 2013, this Court rejected those arguments and ordered Defendants to provide the discovery.

Defendants then filed a Motion for Partial Reconsideration of Order to Compel on June 28, 2013. In it, Defendants argued that only confirmed allegations of abuse should be discoverable. In making that argument, Defendants directly represented Doe's interests as Doe alleges that the allegation made against him was not credible or confirmed. Defendants further requested a protective order in order to protect the privacy rights of third parties. They argued that the order was an invasion of the rights of third parties. The Court heard arguments regarding the privacy rights of third parties and rejected them in part. The Court granted the request for the protective order to address the issue, but still maintained that the discovery must be disclosed.

Accordingly, Doe's interests have been adequately represented by Defendants. There is no merit to Doe's argument that he and the Archdiocese have diverging interests. The Archdiocese's many attempts to evade disclosure of the information are evidence that their interests are strongly allied with Doe's. Accordingly, Doe is not entitled to intervention as of right.

"Subsection b of Rule 52.12 governs permissive intervention. It provides, in pertinent part, that upon timely application, anyone may be permitted to intervene in an action "when an applicant's claim or defense and the main action have a question of law or fact in common." Rule 52.12(b). Review of a trial court's decision regarding permissive intervention is for abuse of

discretion. *Am. Tobacco*, 34 S.W.3d at 131. "Judicial discretion is abused when the trial court's ruling is clearly against the logic of the circumstances then before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration…." *Id.* (internal quotes and citation omitted)." McMahon v. Geldersma, 317 S.W.3d 700, 706 (Mo. App. W.D. 2010).

Doe cannot show that his claim or defense and the main action have a question of law or fact in common. In fact, he does not even have a claim or defense related to the case. Doe's interests are purely related to his own privacy. He will not be affected in any way by the outcome of this litigation or any legal issues that the case addresses. This is a case regarding the liability of the Archdiocese for the abuse of a child by one of its priests. The issues regard liability and the facts of the abuse.

Moreover, as explained above, Defendants made the arguments that Doe wants to present here. They thoroughly argue the privacy rights of their clergy members. The fact that the Court disagreed with the arguments does not mean that they were insufficiently made.

However, if this Court believes that out of an abundance of caution, Doe should be allowed to intervene on his own behalf, his intervention should be short because his claims should fail immediately on the merits.

K. Even if John Doe has the Right to Intervene in this Matter, his Arguments Should be Overruled on the Merits

Even if this Court chooses to follow Rosado, the case did not resolve the merits of the issue but merely directed the trial court to allow the intervention and to rule on the merits. 758 A.2d 916 (Conn.App. 2000). Plaintiff is unable to ascertain what the Court concluded on the merits in the 2000 Rosado case, but discovered that in 2006, the Diocese was ordered by a court

to reveal the names of abusive priests, refused to do so, and was then punished by a default judgment for Plaintiff. (Attachment TT)[2].

Despite searching, Plaintiff is unable to find any Court of Appeals ruling following up on the default order. Alas, even intervener's championed Rosado case ultimately led to defeat on the merits for the Diocese of Bridgeport and the Doe priests on this issue. Their names have long since been revealed. (Attachment I).

Similarly here, Doe, if allowed to intervene, should be denied relief on the merits immediately. This is because even though State ex. Rel. Delmar Gardens v. Gartner, 239 S.W.3d 608 (Mo.banc 2007) recognizes a right to privacy in personnel records, it is not an absolute right. The Court notes that any interests in protecting privacy rights must be balanced against the Plaintiff's need to obtain disclosure. Id at 612. Unlike in Delmar Gardens, the Plaintiff here requires the information requested to prove an essential element of the claim she pursues. The Court in Delmar Gardens, also noted that a protective order, such as the one entered here, may be sufficient to protect the privacy of the parties. Id. at 611-612.

In an act of desperation, Doe seems to present a "what's good for the goose is good for the gander" argument in claiming that it is hypocritical for Jane Doe 92 to conceal her identity when Doe cannot. This is a cute argument, but even Doe must acknowledge that Doe 92 was allowed to file her case under a pseudo name, but she was still compelled to reveal her identity to defendants in order for them to be able to proceed. Plaintiff requests that if Doe wants to

[2] It is interesting to note that the Diocese of Bridgeport has been thought to be a dumping ground for removed pedophile priests from New York. Similarly, New Mexico was a dumping ground for pedophile priests out of California. Accordingly these Diocese are known to strongly resist revealing lists of accused priests because the percentage of abusive priests within these diocese is so high.

intervene in this case, his identity must be revealed to Plaintiff so that she can properly assess the merits of Doe's arguments.

For all Plaintiff knows, Doe is fictitious. Plaintiff cannot evaluate whether Doe truly is an accused priest, how many accusations have been made against him, or what type of conclusion came of his accusations. Without knowing that, Doe could be a convicted pedophile, or a defrocked pedophile. Doe claims that he is a falsely accused priest because his victim recanted, but victims recant all the time for reasons other than "it didn't happen." Maybe, Doe battered his accuser into recanting. Maybe he bullied the child's parents into forcing him or her to recant. Maybe he paid the victim a sum of money to recant. Plaintiff is unable to evaluate the merits of Doe's claims.

III. CONCLUSION

Without a doubt, Defendants have abused the Court's authority in this case. There must be consequences. Plaintiff respectfully requests that this Court strike Defendants' pleadings in this matter or, in the alternative, order Defendants to disclose the withheld information immediately, with a fine issued for every day they fail to comply, and attorney's fees for the efforts of Plaintiff's counsel in dealing with this issue.

/S/ Nicole Gorovsky
CHACKES, CARLSON & HALQUIST, LLP
Kenneth M. Chackes, MOBAR #27534
M. Susan Carlson, MOBAR #37333
Nicole Gorovsky, MOBAR #51046
906 Olive Street, Suite 200
St. Louis, Missouri 63101
Tel. (314) 872-8420
Fax (314-872-7017)
kchackes@cch-law.com
scarlson@cch-law.com
ngorovsky@cch-law.com

JEFF ANDERSON & ASSOCIATES, P.A
Jeffrey R. Anderson
E-1000 First National Bank Bldg.
332 Minnesota Street
St. Paul, Minnesota 55101
Phone: (651) 227-9990
Fax: (651) 297-6543

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that on this 13th day of December, 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:

Gerard T. Carmody, #24769
David P. Stoeberl, #46024
Ryann C. Carmody, #56831
120 South Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone (314) 854-8600
Facsimile (314) 854-8660
gtc@carmodymacdonald.com
dps@carmodymacdonald.com
rcc@carmodymacdonald.com

Attorneys for Defendants

Lisa Pake
1010 Market St. Suite 1620
St. Louis, MO 63101
lpake@haar-woods.com

Attorneys for Doe

/S/Nicole E. Gorovsky

Exhibit 19

Exhibit 19

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

JANE DOE 92, Plaintiff, vs. ARCHDIOCESE OF ST. LOUIS, *et al.*, Defendants.	)	Case No. 1122-CC10165 Division 18 **FILED UNDER SEAL**

DEFENDANTS' RESPONSE TO MOTION FOR SANCTIONS AND REPLY IN SUPPORT OF MOTION FOR MODIFICATION OF ORDER

Defendants Archdiocese of St. Louis and Archbishop Robert J. Carlson, through Carmody MacDonald P.C. and Lewis Roca Rothgerber LLP (*pro hac vice* application pending) respond to Plaintiff's motion for sanctions and reply in support of their motion for modification as follows:

I. INTRODUCTION.

In accordance with the Court's deadline, the Defendants tendered the file of the alleged offender priest consisting of hundreds of pages, along with his laicization file, and correspondence between him and his archbishop. The only documents withheld were a handful subject to the attorney-client privilege. In accordance with the same deadline, the Defendants, with huge effort, tendered a summary matrix ("Matrix") never provided in any prior litigation, that, in accordance with this Court's order described childhood sexual abuse allegations received by the Archdiocese over a twenty year period. The listed allegations describe purported conduct from 1942 through 2000. With the same tender, the Matrix listed allegations received over a five year period based on information that the Archdiocese gathered from over 100 Catholic parishes and agencies. The Archdiocese acquired and produced the information from Catholic parishes and agencies even though neither this Court nor the Archbishop has authority to command

delivery of the latter. The Matrix included the categories of information ordered by the Court except for the names of non-party complainants and accused persons.

The Defendants did not casually or disrespectfully withhold and protect these names. They provided affidavits from three learned experts—a psychologist, a psychiatrist, and a canonist—explaining how producing the names of these individuals would, in their expert opinions, violate their personal, legal, and canonical rights; invade their privacy; breach their confidences; and dredge up painful and deeply personal experiences from five, ten, twenty, forty, and sixty years earlier. The Defendants did not stop there. They cited and explained the common law, the statutes, and the constitutional provisions that justified their protection of the names of unrelated nonparties. The Defendants also provided law as to why the sunset provision on the protective order was at cross purposes with the protective order itself. These affidavits and much of this law had never before been brought to the Court's attention. Providing such information is not an insult to the Court but an aid to its deliberations.

Plaintiff responded with a call for sanctions and for deeper discovery and distraction from the real issues in this case. Plaintiff's counsel neither discussed the expert opinions nor rebutted the legal analysis. Instead, he assaulted the Defendants' unprecedented production with adverbs ("blatantly," "brazenly," "deliberately," "manipulatively," "untimely") and sought to explain away the potential injury to so many with second-hand anecdotes from Plaintiff's Minnesota counsel and with mischaracterizations of information drawn from a website funded by plaintiff attorneys suing church defendants.

The status of the argument between the parties related to the protection of nonparty names and to the removal of the protective order's sunset provision is summarized below.

II. THE NAMES OF COMPLAINANTS AND ACCUSED PERSONS UNRELATED TO PLAINTIFF'S ALLEGATIONS ARE NOT PROPER SUBJECTS FOR DISCOVERY.

A. RELEVANCE.

Parties may obtain discovery, through interrogatories and requests for documents, from other parties "regarding any matter . . . that is relevant to the subject matter involved in the pending action . . ." Mo. R. Civ. P. 56.01(b)(1); 57.01, 58.01. "Relevance" is measured by the pleadings. Relevant matters "relate[] to the claim or defense of the party seeking discovery or to the claim of defense of any other party. . ." *Id.* 56.01(b)(1). This is important because "Missouri is a fact-pleading state." *Gibson v. Brewer*, 952 S.W.2d 239, 245 (Mo. 1997). It is particularly important here because Plaintiff focused the allegations in her petition, consistently with her objectives, on the Archdiocese's purported tortuous failure to supervise *Joseph Ross* when he was a priest. Petition, ¶¶ 9, 12-14, 24, 35-37, 44-45, 48, 54, 61-62.

During the December 17 argument, Plaintiff's counsel listed the facts the Archdiocese allegedly knew *about Ross.* He contended that those facts should have caused the Archdiocese to remove Ross earlier from priestly ministry. Plaintiff's counsel has now received Ross' entire personnel file and laicization file, both of which contain substantially more information *specifically about Ross*, the Archdiocese's knowledge about *Ross*, and its supervision of *Ross*. Plaintiff's counsel will conclude that these documents provide even more proof in support of Plaintiff's claim that the Archdiocese intentionally failed to supervise this particular priest. The production of this information, specific to this case, provides an additional development obviating any need to open the doors of discovery to scores of unrelated situations.

B. PRIVACY AND PROTECTION.

When litigating claims of great sensitivity as here, all should seek, first, to do no harm. This salutary goal is embodied in Rule 56.01(c): "the court may make any order *which justice*

requires to protect a party or a person from annoyance, embarrassment, oppression, or undue burden or expense . . ."

1. Plaintiff's Planned Expansion of Lawsuit. To his credit, Plaintiff's counsel admits he does not intend to stop at seeking the discovery of the names of every complainant and accused person identified over a twenty year period within an archdiocesan church serving over 500,000 Catholics. During the December 17 argument, he said he wants their addresses and phone numbers. He admits he intends to contact them, *Plaintiff's Motion for Sanctions* 8, 14, and hints he may call them to testify at trial. *Id.* For each such complainant, he wants more detail about their complaint, including "each date, fact, event[, and] occurrence." *Id.*, 15. For the accused person--whether the accusation has a factual basis or not--he wants even more. He wants to discover their status within the Catholic Church at the time of the alleged wrongful conduct, *id.*, 8; their employer, *id.*, 9; and the ecclesiastical offices they subsequently held, *id.*, 8. He wants to know if they were sent for treatment, *id.*, 12, and whether they returned to work, *id.*, 11-12. He wants to know which committed serial offenses. *Id.* 12. He wants to compare the Archdiocese's description of the accused persons' conduct with what he has in his own files. *Id.* 12. He wants enough information about each so he can determine for himself who was accused without merit and who was rightly accused so he can publish the names of the latter. *Id.*, 13. To learn all of this, Plaintiff's counsel admits that he wants every document Defendants reviewed when they prepared the Matrix. *Id., 15.* Those documents are the personnel files on each accused person. If this Court permits such discovery, this case will morph into scores and scores of cases over which the parties argue about each fact, each supervisory decision, and each lesson to be learned. The case will spiral out of control, and, far worse, Plaintiff's planned use of the names and other information she seeks will produce many casualties. Their confidences will

be breached. Their privacy invaded. These persons will be annoyed, embarrassed, and oppressed.

2. Plaintiff's Pseudonymous Litigation. Plaintiff's own actions show that she understands all of this for she herself chose to file and prosecute this lawsuit pseudonymously.

3. Expert Opinions Remain Unchallenged. Plaintiff makes no effort whatsoever to contest expert reports of Barbara Ziv, M.D., Barry Zakireh, Ph.D., or Msgr. John Shamleffer, J.C.L., M.C.L. These reports establish that the disclosure of names of nonparty complainants and accused persons who have no relation to this case would invade their privacy and cause them great harm. Dr. Ziv testified that "Sexual abuse is a traumatic experience and most individuals who are victims of childhood sexual abuse choose to disclose their experience to a limited number of trusted individuals. Ziv. Aff. ¶ 12. Dr. Zakireh testified that "victims overwhelmingly prefer to keep such information private, and especially to maintain control over how and when any future disclosures would be made . . ." Zakireh Aff. ¶ 11(a). Msgr. Shamleffer explained that, by force of canon law, Catholics and other persons have rights to privacy and reputation, and those who come forward with complaints expect the Church to respect their confidentiality. Shamleffer Aff. ¶¶ 45-46, 49, 51-52, 54-55. All three experts also recognized the likely harm, especially to those wrongfully accused, that would come from disclosing their names in this lawsuit. Zakireh Aff. ¶ 13-14; Shamleffer Aff. ¶¶ 44-51; Ziv Aff. ¶ 15. Dr. Ziv, for example, noted that "wrongly-accused persons are also often traumatized and harmed by having false accusations made public to others." *Id.* Finally, Msgr. Shamleffer noted that preservation of confidences is essential for "the Archdiocese to carry out its mission to investigate fully and thoroughly any and all allegations of abuse and to minister to those who

have come to the Archdiocese for assistance. Shamleffer Aff. ¶ 54. Accordingly, the disclosures Plaintiff seeks will chill future efforts by the Archdiocese to learn of and remove problem individuals.

4. Plaintiff's Weak Assurance. Plaintiff essentially admits the experts' testimonies, writing "Plaintiff's counsel does not dispute that victims of sexual abuse and falsely accused individuals might be harmed by unwelcome publicity and involvement in legal proceedings . . ." *Plaintiff's Motion for Sanctions* 13. She then "assures the Court" based exclusively on second-hand anecdotes from her Minnesota counsel, that "such harm can be avoided." *Id.* Her proposed plan? The Archdiocese should first contact these individuals, and then Plaintiff's counsel would follow up. *Id.*, 14. The point is not how their privacy is breached and their confidence betrayed or who is designated to do this. The point is that human beings with no relation to this case, have a right to deal with their past traumas as they will. They have a right to privacy and a right to expect their confidences remain confidential.

C. PRECEDENT SUPPORTS REDACTION OF NAMES.

The facts from these affidavits when applied to Rule 56.01(c) commend an order "that discovery not be had" as regards the names of these individuals. The great weight of case law commends this as well. *Walence v. Treadwell,* 165 F.R.D. 43 (E. D. Pa. 1995) (summary of prior sexual harassment allegations appropriately redacted names of complainants and accused persons); *Dixon Oaks Health Center, Inc. v. Long,* 929 S.W.2d 226 (Mo. Ct. App. 1996) (discovery permitted regarding the particular sexual assailant, but names of unrelated victims not discoverable); *Myers v. Casino Queen, Inc.*, 20013 WL 3321865 (E.D. Mo. 2013) (names of other victims suppressed). There are many more such cases limiting discovery to a particular

Exhibit 20

accused person or institution and his or its alleged victims with the names and contact information for the latter redacted.[1]

D. EVIDENTIARY RULE 404(B) NEITHER REQUIRES NOR PERMITS DISCOVERY OF THE DISPUTED NAMES.

Plaintiff, citing Rule 404(b) principles, argues that the Court's Order was necessary because "there may be no other way to [prove intent] than by showing that the Archdiocesan supervisors were aware that placing pedophile priests with minors was certain or substantially certain to cause harm." *Plaintiff's Motion for Sanctions,* 11-12. In making this statement, plaintiff seeks to have the Court ignore the direct evidence of the Archdiocese alleged failures that she plead in her petition, that her counsel recites at will, and that she will claim she found in Ross' recently produced personnel and laicization files. But Rule 404 is a principle of *exclusion*;

[1] *See, e.g., Morales v. Superior Court*, 99 Cal.App.3d 283, 291-92 (Cal. App. 1979) (trying to prove motive, defendant requested that the husband of the deceased, state the name, address, and telephone number of each woman he dated during his marriage and whether he had sexual relations with women other than his wife; court balanced right to discovery against right to privacy and ordered plaintiff to answer whether he dated other women and had extramarital contacts during his marriage but not to provide the names, address, or phone numbers of his paramours); *Fullbright v. State Farm Mut. Auto. Ins. Co.*, 2010 WL 300436, *6 (W.D. Okla. Jan. 20, 2010) (names, addresses, and other identifying information of other complainants redacted) ; *Smith v. Walley*, 2011 WL 3108329 at *5. (E.D. Ark. July 26, 2011) (party producing discovery ordered to redact from any all identifying and private information regarding non-parties, including names, policy numbers, account numbers, contact information, and banking/loan institutions used); *Jacobs v. Sullivan*, No. 1:05-cv-01625, 2012 WL 3704743 (E.D. Cal. Aug. 27, 2012) (in prisoner §1983 action against correctional officers for use of excessive force, court refused to compel production of "all excessive use of force video tape interviews . . . of all prisoners who were allegedly assaulted by Defendants" by reasoning: "Plaintiff is not entitled to discover confidential information which may include names of third parties or sensitive testimony given under the expectation of confidentiality by third parties not part of this litigation."); W*aters v. U.S. Capitol Police Bd.*, 216 F.R.D. 153, 160-61 (D.D.C. 2003) (names of nonparty complainants not subject to discovery); *Laurenzano v. Lehigh Valley Hosp., Inc.*, No. CIV. A. 00-2621, 2001 WL 849713, at *2 (E.D. Pa. 2001) (same); *State ex rel. West Virginia Fire & Cas. Co. v. Karl*, 505 S.E.2d 210 (W. Va. 1998); *Austin v. Calhoon*, 381 N.Y.S.2d 508 (N.Y. App. Div. 1976) (same).

Exhibit 20

by her very argument that the "intent" exception to Rule 404(b) applies, she concedes that the general rule is to prevent precisely what Plaintiff is attempting to do here.

That is because prior act evidence is, intrinsically, highly suspect. It rests on the legally flawed rationale that past conduct involving different personnel and different factual settings predicts future conduct. Moreover, it turns a trial in one case into a trial on every other case. Note Plaintiff's argument that she will "present witnesses at trial to testify that they too were harmed by pedophile priests" and "the Archdiocese knew about it." Resp. at 12. Plaintiff is expressly proposing to have a mini-trial about *every other allegation of abuse for the last 20 years*, which is what Rule 404(b), and Rule 403, exist to prohibit.

The Rule 404(b) "intent" exception does not apply to put the specific names of victims and the accused (including the falsely accused) in issue. First of all, it is far from established that Rule 404 principles have application where the defendant is a corporation or organization, rather than a natural person. *See, e.g., West v. Marion Lab., Inc.*, No. 90-0661, 1991 WL 517230, at *4 n.1 (W.D. Mo. Dec. 12, 1991) ("Rule 404(b) limits the admissibility of character evidence as applied to 'persons.' Whether a corporation may assume a 'character' for the purposes of Rule 404(b) has been largely unanswered by the caselaw."). Indeed, it would make little sense to try to measure "intent" of the organization by looking to the acts of different personnel, including the administration of five archbishops, coming and going over the 20-year span of the Court's order. *See State v. Franklin*, 894 A.2d 1154, 1157 (N.J. Super. App. Div. 2006) (rejecting other acts evidence as to police department because it was other officers, rather than the one involved in that case, that were involved in the other prior acts).

Second, the key limit on Rule 404(b) evidence under the "intent" exception is the substantial similarity of the other acts. "Evidence of other events has been held to be admissible

. . . to show motive or intent if the other events are not 'too remote in time or dissimilar in circumstances.'" 22 Mo. Prac., Missouri Evidence § 404:5 (4th ed. West 2013) (emphasis added) (quoting *Galvan v. Cameron Mut. Ins.*, 733 S.W.2d 771, 774 (Mo. App. 1987) ("In an arson case, history of other fires, if not too remote in time or dissimilar in circumstances, is admissible to show motive and intent …. The five year period involved is not too remote, and the fires are not dissimilar.") (emphasis added). Here, Plaintiff demands production of the names for even *dissimilar* events. The notion that these persons' confidentiality should be violated even though the event was dissimilar to the allegation here flies in the face of how Rule 404(b) works.

Third, the whole argument is irrelevant because the sensitive, personally-identifying names of these persons are not necessary for Plaintiff to make her argument. Her argument would be the same regardless of whether the victim or accused priest is named John Smith or John Doe. It is the overwhelming practice of trial courts to protect the personally-identifying names of third parties from disclosure, both because it is irrelevant and to protect their privacy.[2]

For example, in *State ex rel. Dixon Oaks Health Center, Inc. v. Long*, 929 S.W.2d 226 (Mo. App. 1996), the plaintiff, an elderly woman in a nursing home facility, alleged she had been sexually abused by another resident. The claims included, among other torts, intentional misrepresentation, battery, and punitive damages. *Id.* at 227 n.2. The plaintiff sought records from the nursing home facility that documented the defendant's involvement in any type of assault, including the sex of any victim and the time and location of the event. The court held

[2] *See* cases cited at n. 1, *supra*, and related text. *See also Bible v. Rio Properties, Inc.*, 246 F.R.D. 614, 620 (C.D. Cal. 2007) ("the rights of third parties can be adequately protected by permitting defendant to redact the guest's complaints and staff incident reports to protect the guest's name and personal information, such as address, date of birth, telephone number, and the like."); *Alpha Life Ins. Co. v. Gayle*, 796 S.W.2d 834, 836 (Tex. App. 1990) ("The real parties in interest have not shown any legitimate right to or interest in the names of the other claimants. We find that relator's interest in protecting the privacy rights of its claimants clearly outweighs any right the real parties in interest have to discover the identities of the other claimants.").

these records were discoverable—but stated "the names of any of the alleged victims . . . are to be redacted." *Id.* at 231.

Finally, even if Plaintiff were right about Rule 404(b), that hardly means that these names are discoverable ***despite*** the existence of other rights and interests. Defendants have articulated a host of constitutional and statutory arguments, and the third parties undeniably have serious privacy and reputational interests at stake. We have submitted a detailed Motion, supported by *unchallenged* affidavits of mental health professionals who work with sexual abuse victims, and who themselves investigate sexual abuse claims, that making the names public would be psychologically and reputationally damaging to the victims and to the accused. Plaintiff herself "does not dispute that victims of sexual abuse and falsely accused individuals might be harmed by unwelcome publicity and involvement in legal proceedings." Resp. at 13.

In Missouri, "privacy rights of non-parties must be considered" in weighing a request for discovery. *State ex rel. Blue Cross & Blue Shield of Mo. v. Anderson*, 897 S.W.2d 167, 171 (Mo. App. 1995) (denying plaintiff's request for financial documents in part because "invasion of non-party privacy rights outweighs [plaintiff's] need for the requested documents"). Thus:

> [I]n ruling upon objections to discovery requests, trial judges must consider not only questions of privilege, work product, relevance and tendency to lead to the discovery of admissible evidence, but they should also balance the need of the interrogator to obtain the information against the respondent's burden in furnishing it. Included in this burden may well be the extent of an invasion of privacy, particularly the privacy of a non-party. Thus, even though the information sought is properly discoverable, upon objection the trial court should consider whether the information can be adequately furnished in a manner less intrusive, less burdensome or less expensive than that designated by the requesting party.

State ex rel. Anheuser v. Nolan, 692 S.W.2d 325, 328 (Mo. App. 1985) (emphasis added) (internal citation omitted) (denying document request). Thus, even if Plaintiff had some minimal

interest in discovering these names, it is barred by the other doctrines confidentiality interest as articulated in the affidavits and explained in the Motion./

III. PLAINTIFF SUFFERS NO PREJUDICE.

Without the names, Plaintiff claims she will be prejudiced, first, because she will have no ability to argue that harm was "substantially certain to occur by knowingly placing sexually abusive priests into contact with minors." *Plaintiff's Motion for Sanctions*, 7. This is false. Plaintiff's two law firms collectively have recovered hundreds of millions in judgments or settlements without such information, including large sums in Missouri. Next, she contends that she has lost time arguing about discovery. *Id.* While time has been lost due to Plaintiff's unreasonably expansive discovery request, this has affected all parties. Third, Plaintiff contends she will have "lost the ability to make a *prima facie* showing of intentional failure to supervise. *Id.*, 8. Plaintiff will make such a showing or fail to do so based on the Archdiocese's knowledge about and supervision of a particular priest, Ross, and not about what it knew about and how it supervised individuals with no relationship to Plaintiff's allegations. Finally, Plaintiff repeats her *ad hominem* arguments about the Archdiocese's purported failure to produce. As previously shown, the Archdiocese met this Court's deadlines and produced more information about a particular priest and more information about a broader range of unrelated accusations involving nonparties than any church defendant has produced in Missouri history.

IV. COMPELLING PRODUCTION OF THE NAMES VIOLATES MISSOURI'S RELIGIOUS FREEDOM RESTORATION ACT AND THE FIRST AMENDMENT FREE EXERCISE CLAUSE.

The State, through its judicial branch, violates Missouri Religious Freedom Restoration Act, Mo. Rev. Stat. §1.302 ("Missouri RFRA") if: (1) it restricts a "person's exercise of religion," (2) the restriction is not "essential to further a compelling governmental interest," and (3) the restriction "is not unduly restrictive considering the relevant circumstances."

Msgr. Shamleffer's testimony, endorsed by Archbishop Carlson, establishes that judicially ordered production of the names contrary to a host of canonical and pastoral practices, would burden the exercise of religion of all persons and entities involved with such communications. Plaintiff does not contest this.

Plaintiff's only argument is that production of these names, as long as 60 years after the fact, would help prevent child abuse and that prevention of child abuse constitutes a compelling governmental interest. There are multiple problems with this argument. First, publication of the names of victims and wrongly accused persons is not preventive. It actually harms prevention because betrayal of confidence and invasion of privacy discourages such persons from coming forward. Second, publication of names decades after the fact, after individuals involved are deceased, and after most perpetrators have been removed from office is also not preventive. Missouri public policy recognizes that early reporting is preventive because it require "immediate" reporting of suspected instances of child abuse.[3] Finally, even if it were preventive, the government's interest cannot be said to be compelling when the government inoculates itself, through the doctrine of sovereign immunity, from childhood sexual abuse claims when children are sexually assaulted in governmental institutions. Plaintiff contends that Mo. Rev. Stat. § 537.610 waives sovereign immunity bars for such claims. It does not. This section only waives sovereign immunity if the governmental entity acquires insurance for such claims and, even then, only does so "for the purposes covered by such policy."

[3] *See, e.g.*, Mo. Rev. Stat. § 210.115 requiring "immediate" reporting of reasonably suspected child abuse or neglect.

V. COMPELLING PRODUCTION OF THE NAMES OF COMPLAINANTS AND ACCUSED PERSONS, CONTRARY TO CATHOLIC DOCTRINE, CANON LAW AND SOUND PASTORAL PRACTICE, VIOLATES BOTH THE FIRST AMENDMENT DOCTRINE OF CHURCH AUTONOMY AND THE MISSOURI BILL OF RIGHTS.

Plaintiff does not contest Msgr. Shamleffer's testimony. Msgr. Shamleffer explains, that the Church has rules and procedures for receiving complaints from its members regarding the misconduct of its clergy; Shamleffer Aff. ¶¶ 36-51, 53-56, that these rules and procedures are rooted in canon law, *id.; and that canon law is rooted in Catholic doctrine and Scripture, id.,* ¶¶ 14-16. Finally, he explains that among these rules and procedures is great respect for confidentiality in handling such complaints, for the privacy of the individuals involved, and for the various reputational interests. *Id.*, ¶ 53-54. These are ecclesiastical subject matters, and the Doctrine of Church Autonomy prevents government from becoming entangled with them. Indeed, the Doctrine acts as a structural restraint precluding governmental assertions of control over these subject matters including government mandated disclosure of confidences and violation of rights of privacy.[4]

Plaintiff contends that, when *Gibson v Brewer*, 952 S.W.2d 239, 248 (Mo. 1997 determined that the claim of intentional failure to supervise survived a First Amendment Church Autonomy challenge, it implicitly held that religious liberty concerns cannot limit the scope of discovery with regard to this claim. She also contends, that, because those suing churches for childhood sexual abuse claims must allege intentional failure to supervise and because that claim has higher standards of proof, those suing churches necessarily have broader discovery rights. The first problem with this argument is that it upends *Gibson*'s rationale.

[4] *See* authorities cited in Defendants' Tender of Discovery and Motion for Modification of Order, 13-16.

Gibson expressed great solicitude for the "autonomy and freedom of religious bodies" over ecclesiastical subject matters. Those subject matters included "questions of religious doctrine, polity, and practice;" "questions of hiring, ordaining, and retaining clergy;" "selection of clergy;" "interpretation of religious doctrine, policy, and administration;" and ecclesiastical "determination [of] response to its members' claims." *Id.*, 952 S.W.2d at 246-47, 249. In seeking to reduce government entanglement with these subjects, *Gibson* held that the First Amendment barred adjudication of the claims against religious societies for negligent hiring of clergy, negligent supervision of clergy, and the independent negligence of a church. *Id.*, 952 S.W.2d at 247-48, 250. *Gibson*'s objective was to reduce governmental entanglement with churches by limiting claims to those where the church acted ***malum in se,*** that is, to those where ecclesiastical supervision intended the resulting wrong. *Gibson*'s concern for the rights of religious societies to enjoy substantial control over core ecclesiastical subject matters simply cannot be squared with Plaintiff's contention that the same court intended to subject church defendants to exponentially broadened discovery and government entanglement with the manner in which a church receives complaints from her members, investigates those complaints, and applies discipline to the church's clergy.

The implication of Plaintiff's argument is that *Gibson* imposed a discovery penalty because of religion and because church defendants invoked their First Amendment freedom. If so, this would constitute state discrimination based on religion and invoking the First Amendment rights accompanying such status. Such a result fouls the Missouri Bill of Rights provision that guarantees that "no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship." Mo. Const. art. I, § 7.

VI. PLAINTIFF'S "EXAMPLES" OF BROADLY ORDERED DISCOVERY DO NOT WITHSTAND SCRUTINY.

Plaintiff provides two examples where other courts purportedly ordered discovery of the names of non-party complainants and accused persons unrelated to a plaintiff's allegation: the recent order in the Chaminade College Preparatory case, *Plaintiff's Motion for Sanctions,* 13-14; and the listing of numerous other Catholic institutions that purportedly disclosed such information, *id.*, 16-17.

A. THE COURT'S ORDER IN THE CHAMINADE SCHOOL CASE SUPPORTS DEFENDANTS' POSITION, NOT PLAINTIFF'S.

In the Chaminade case, *John Doe 116 v. Marianist Province of the United States*, (No. 12SL-CC00653), John Doe 116 alleges he was sexually abused by Brother Meinhardt, S.M., a Marianist brother working at Chaminade in the late 1960s. Assouad Affid. ¶¶ 2, 5 (attached). Shortly before Chackes, Carlson & Halquist, LLP filed suit on behalf of John Doe 116, the Marianist Provincial, Father Solma sent a letter to Chaminade alumni that is attached as Exhibit A to the Assouad affidavit. In that letter, Father Solma informed the alumni that he had receive "an allegation of sexual abuse against two former teachers at Chaminade College Prep: Bro. Louis Meinhardt and Bro. John Woulfe." He explained that, while they were both deceased, they had both served as teachers at Chaminade with their terms of service there overlapping from 1968 to 1977. He then asked the alumni to contact him if they had "any information concerning abusive behavior by either of these men or by any other Marianist associated with Chaminade."

John Doe 116 served "discovery requests on the Marianists asking for information regarding [his alleged abuser,] Brother Meinhardt. Assouad Affid., ¶ 6. He also sought discovery regarding "any allegations of sexual abuse against any Marianist brother, priest, or lay

employee, regardless whether they were assigned to Chaminade, or elsewhere, for the 20 years prior to and during the alleged abuse in the case." *Id.*

The parties argued over the scope of this requested discovery, and the Marianists eventually filed petitions for writs of prohibition with both the Missouri Court of Appeals and the Missouri Supreme Court. After all this litigation, the scope of permissible discovery was essentially the same as the Archdiocese produced here when it produced Ross' files. Mr. Assouad concludes:

> In the case referenced above and in the two related writ proceedings, no court ordered production of and the Marianists have not produced any information or documents related specifically to allegations of sexual abuse against Marianists brothers, priests, or employees other than Brothers Meinhardt and Woulfe. In the case referenced above and in the two related writ proceedings, no court ordered and the Marianists have not produced any names of alleged Marianist offenders or alleged victims of Marianist brothers, priests, or lay employees other than Brothers Meinhardt and Woulfe.

Assouad Affid. ¶ 8.

Accordingly, the court in the Chaminade case limited discovery to facts related to the person who allegedly abused the plaintiff and to his colleague serving at the same school during the relevant period of time. Here, the Archdiocese has produced Ross' personnel file that includes documents related every known person claiming to have been abused by Ross. The Courts in Chaminade did not require any summary matrix from the Marianists as to allegations against unrelated non-parties or their alleged victims—much less the names of such individuals--and the Court similarly ought not require production of such information or names here.

Exhibit 20

B. PLAINTIFF'S LIST OF OTHER DIOCESES THAT PURPORTEDLY DISCLOSED LISTS OF ACCUSED PRIESTS IS BASED ON MISCHARACTERIZATION OF ATTACHMENTS THAT THEMSELVES LACK PROPER EVIDENTIARY FOUNDATION.

On pages 16 and 17 of Plaintiff's motion, plaintiff provides a list of Catholic institutions that purportedly provided information similar to what Plaintiff seeks here. The listing comes from a self-serving website known as bishopaccountability.org that is funded by plaintiff attorneys suing Catholic institutions. The documents offered as exhibits taken from that site bear so little foundation, evidence of authorship, and detail to render them useless as support for Plaintiff's argument. Even if they had proper foundation, they do not support Plaintiff's contentions.

None provide an example of a Court ordering a Catholic institution to publish the names of complainants or victims or of a Catholic institution voluntarily doing so. It is also extremely troubling that among the attachments Plaintiff published with her Motion is a protective order from a lawsuit against the Diocese of Joliet. *See* Attachment F. This attachment consists of three copies of the same "Amended Protective Order. The third of the three includes the names of a number of "credibly accused" priests, each of whom was either deceased or removed from ministry. The terms of that protective order forbid what Plaintiff did here when she provided that list to this Court, and confirm the Defendants' worst fears of how this process can break down.

Plaintiff, citing Attachments C through I, contends that there are seven examples where a court ordered a Diocese to publish "information." Attachments C and I suggest there was no court order. Attachments F and G reference no court order. None of the remaining attachments even hint that the names of complainants were produced or ordered to be produced. Attachment D states that the diocese only published the names of accused priests where the accusation was "admitted, corroborated or otherwise substantiated" unlike the circumstance here where Plaintiff

seeks production of the names of the accused regardless whether there was a basis for the accusation or not. It is unclear whether the names of the priests referenced in Attachment H were limited to the credibly accused. What is clear in that attachment is that the production was subject to a protective order.

Not one of the forty-two attachments provided by Plaintiff support a sunset provision to the protective order.

Plaintiff notes that five dioceses published lists of accused persons in the context of their bankruptcy proceedings. At least one Diocese on the non-bankruptcy list was in fact a bankrupt diocese. Attachment Y. The circumstance of bankruptcy is distinguishable because, when dioceses voluntarily seek bankruptcy protection, they accept expanded court jurisdiction over them. They also must list all potential claims and claimants and publish notices of bar dates to potential claimants in order to ensure that the discharge they seek is effective.

As regards the remaining attachments, none reference publication of victims' names, and none appear to be the product of a court order. Many have uncertain authorship. *See, e.g.,* Attachments G, Z, AA, DD, GG, II. Others appear to have been authored by bishopaccountability.org. *See, e.g.,* Attachments JJ, KK, LL, MM.

In those instances in which Dioceses published names of accused persons, they sometimes limited their list to those whose names were previously made public, Attachments L, W; to those who had been "permanently removed," Attachments Q, X; to those who were named defendants in pending litigation, Attachments I, EE; and, almost always, to those were the accusations were deemed, by the Diocese or its Review Board, to be "credible," "admitted," "corroborated," "substantiated," "likely to have offended," "confirmed," "having a semblance of truth," "credibly accused while living." *See, e.g.,* Attachments C, D, E, F, G, K, O, P, R, I, V, Z,

FF, GG, HH. II. Some produced statistical summaries with no names of complainants or accused persons, Attachments WW, CC. One involved commentary by a prosecutor and not a publication by a diocese. Attachment BB. In sum, even if these attachments had an adequate evidentiary foundation, clear authorship, sufficient detail, they simply do not support any order from this Court requiring the Defendants to produce the names of complainants, the names of those accused without substantiation, or to operate under a protective order that expires five years after a lawsuit ends.

VII. THE COURT SHOULD EITHER RENDER FATHER DOES' MOTION TO INTERVENE MOOT OR IT SHOULD GRANT IT.

If the Court does not require the Defendants to produce the names of accused person, Father Doe's motion to intervene becomes moot. If it orders Defendants to produce such names, it should grant Father Doe's motion and those of any claimant or accused person whose name might similarly be disclosed.

VIII. THE COURT SHOULD STRIKE THE SUNSET PROVISION.

As shown in Defendants' Motion for Modification, the need to protect nonparty complainants and accused persons from disclosure of their names does not diminish with the passage of time. The sunset provision, therefore, wars with the protective order to which it is appended. Plaintiff did not engage or otherwise respond to these arguments and law. Instead, Plaintiff wrote that the issue is not urgent. *Plaintiff's Motion for Sanctions,* 19. But it seems urgent to Father John Doe, and it would undoubtedly seem urgent to other complainants and accused persons if they had any idea what Plaintiff seeks to learn about them and their past.

Plaintiff's position regarding the sunset provision is even less defensible because on page 13 of her motion, she wrote that **she "and her counsel have absolutely no interest in publicizing the names of any victims or the names of falsely accused individuals and cannot**

conceive of any circumstances that would result in public disclosure of their names." (Emphasis added). This concession leaves at issue only whether the names of those persons rightly accused should lose protection at the five-year sunset. But separating the non-party accused persons into those falsely accused and those rightly accused requires substantial additional discovery and scores of mini-trials unrelated to resolving Plaintiff's claims against Ross and the Archdiocese.

Given Plaintiff's concession regarding the names of victims and the names of those falsely accused, given her failure to address Defendant's authorities and arguments against the sunset provision, and given the impracticability of separating scores of accused persons into one group of those falsely accused and another group of those rightly accused, the Court should strike the protective order's sunset provision.

IX. CONCLUSION.

For these reasons, Defendants respectfully request that the Court finds and orders:

A. Defendant has substantially complied with the Court's May 13, 2013 and November 15, 2013 orders, and the Court lifts the current risk of sanction stated in that order;

B. The Court finds that the purposes for the production of the Matrix—possible proof of notice and issues related to punitive damages—is satisfied without producing names of complainants and accused individuals and Defendants need not produce such names or any other information related to the Matrix;

C. The Protective Order previously entered by the Court is hereby made permanent and the five year sunset provision is hereby removed.

D. The Court denies John Doe's motion to intervene is moot because the names shall not be released.

Exhibit 20

Respectfully submitted,

CARMODY MacDONALD P.C.

By: /s/ David P. Stoeberl

Gerard T. Carmody, #24769
David P. Stoeberl, #46024
Ryann C. Carmody, #56831
120 South Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone (314) 854-8600
Facsimile (314) 854-8660
gtc@carmodymacdonald.com
dps@carmodymacdonald.com
rcc@carmodymacdonald.com

and

LEWIS ROCA ROTHGERBER LLP

L. Martin Nussbaum (pro hac pending)
Scott M. Browning (pro hac pending)
William Voit (pro hac pending)
Telephone (719) 386-3000
Facsimile (719) 386-3070
mnussbaum@lrrlaw.com
sbrowning@lrrlaw.com
wvoit@lrrlaw.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

A copy of the foregoing was served on all counsel of record via the court's electronic filing system this 24th day of December, 2013.

/s/ David P. Stoeberl

Exhibit 20

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.	)	

AFFIDAVIT OF JUSTIN ASSOUAD

I, Justin Assouad, do hereby state under oath as follows:

1. I am over twenty-one years of age. I serve as legal counsel for the Marianist Province of the United States ("Marianists").

2. I make this affidavit based on my personal knowledge, information and belief and upon my review of pleadings, motions, and orders in John Doe 116 v. Marianist Province of the United State *et al.*, No. 12SL-CC00653

3. The Marianist Province of the United States (formerly known as the "Society of Mary") have provided priests and brothers as administrators, teachers, and staff for the Chaminade College Preparatory School ("Chaminade") for many years.

4. On January 17, 2012, Father Solma sent the letter attached as Exhibit A to the Chaminade Alumni. The letter bears the date January 17, 2011. The year is incorrect and should have said 2012.

5. Shortly after the date of Father Solma's letter, John Doe 116, represented by Ken Chackes and his law firm, filed suit against the Marianists alleging that Brother Meinhardt had abused John Doe 116 in the late 1960s. Brother Meinhardt is now deceased.

6. John Doe 116 subsequently served discovery requests on the Marianists asking for information regarding Brother Meinhardt. He also requested in discovery information regarding any allegations of sexual abuse against any Marianist brother, priest, or lay employee, regardless whether they were assigned to Chaminade, or elsewhere, for the of 20 years prior to and during the alleged abuse in the case.

7. After substantial briefing and argument, St. Louis County Circuit Court Judge Reno ordered the Marianists to produce certain communications between Father Solma and Chaminade alumni who responded to his letter described above as reflected in bates-numbered documents identified in the privilege log produced by Defendants.

EXHIBIT A
CONFIDENTIAL
Subject to Protective Order

Exhibit 20

8. In the case referenced above and in the two related writ proceedings, no court ordered production of and the Marianists have not produced any information or documents related specifically to allegations of sexual abuse against Marianists brothers, priests, or employees other than Brothers Meinhardt and Woulfe. In the case referenced above and in the two related writ proceedings, no court ordered and the Marianists have not produced any names of alleged Marianist offenders or alleged victims of Marianist brothers, priests, or lay employees other than Brothers Meinhardt and Woulfe.

FURTHER AFFIANT SAYETH NOT.

Justin Assouad

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

Sworn and subscribed to before me this 24 day of December 2013.

Notary Public

My Commission Expires:

KARLA CARROLL
Notary Public - Notary Seal
STATE OF MISSOURI
St. Louis City
My Commission Expires. Jan. 25, 2016
Commission # 12296503

EXHIBIT A
CONFIDENTIAL
Subject to Protective Order

Exhibit 20

The Marianists
PROVINCE OF THE UNITED STATES

17. January 2011

Dear Chaminade Alumnus,

The Marianist Province of the United States has received an allegation of sexual abuse against two former teachers at Chaminade College Prep: Bro. Louis Meinhardt and Bro. John Woulfe. I have met personally with the individual who has brought the allegation forward.

John Woulfe, who taught and coached hockey at Chaminade from August 1968 through May 1977, left the Society of Mary in August of 1977 and is now deceased. Louis Meinhardt was stationed at Chaminade as teacher and coach from 1941-48 and again from 1958 until 1982. He died as a Marianist in 1990.

We take these allegations seriously and are notifying Chaminade alumni from the years when Woulfe and Meinhardt were assigned to Chaminade College Prep. I am requesting that you contact me at the Provincial Office if you have any information concerning abusive behavior by either of these men or by any other Marianist associated with Chaminade. I also request that this notice be passed along to any other alumnus whom you know and who might not be included in the Chaminade alumni records.

Sexual abuse of a minor is a grave evil. The Marianists are committed to the safety of all those we serve in our schools and ministries, and we are working to prevent any type of abuse from ever happening again in any school or ministry we sponsor. Copies of Chaminade's Child Protection Policies can be obtained through the administrative office of the school. Copies of the Marianists' "Ethics and Integrity in Ministry: Child Protection Policies" can be obtained through my office. We want to assist in the healing of anyone who has been abused by a Marianist in the past, and we seek to ensure a safe and protected environment in all of our ministries, most especially those involving children and young adults.

I am grateful for your understanding and cooperation as we address these allegations. Let us together pray for healing in our society and in our Church for all victims of sexual abuse.

Sincerely,

Fr. Martin A. Solma, SM
Provincial
msolma@sm-usa.org

4425 West Pine Boulevard St. Louis, Missouri 63108-2301 314.533.1207 314.533.0778 fax

EXHIBIT A
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Subject to Protective Order

Exhibit 20