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MARY ANN M., IRENE G., MARION P. AND MARIE C.

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO

Coordination Proceeding  
Special Title (Rule 1550(b))

THE CLERGY CASES II

[Case No. JCCP 4297  
Coordination Trial Judge: Honorable Haley J.  
Fromholz]

MARY ANN M., IRENE G., MARION P. and  
MARIE C.,

Plaintiffs,

v.

ARCHDIOCESE OF LOS ANGELES, DIOCESE  
OF SAN DIEGO, et al.,

Defendants.

Case No. GIC821122

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION FOR LEAVE TO AMEND  
COMPLAINT TO ALLEGE PUNITIVE  
DAMAGES AGAINST DEFENDANT  
DIOCESE OF SAN DIEGO**

ASSIGNED TO HON. JAY M. BLOOM  
—DEPARTMENT 70

Date: December 27, 2006  
Time: 8:30 a.m.  
Dept: 20

Trial Date: February 2, 2007

**I. INTRODUCTION**

On September 27, 1957, defendant Roman Catholic Bishop of San Diego ("RCBSD") sent one of its priests, Father Franz Robier ("Robier"), to a monastery in Jemez Springs, New Mexico for treatment because he had been sexually abusing little girls. One month later, the defendant welcomed him back to the Diocese where he continued his abuse unabated and at different parishes for years to come. The defendant took no steps to supervise him to prevent further sexual

1 abuse, nor to warn any of Robier's victims, or their parents. Such behavior constitutes despicable  
2 conduct worthy of punitive damages.

3 As the following will attest, plaintiffs were subject to horrendous sexual abuse and  
4 constant fear from 1955 through 1959. Defendant RCBSD had actual knowledge of the abuse and  
5 gave Robier access to plaintiffs and other young girls at Holy Spirit Church by authorizing his  
6 continued ministry. RCBSD acted with conscious disregard for the rights and safety of plaintiffs  
7 in failing to remove him from Diocesan service.

8 Based on these acts of oppression and malice, plaintiffs (four of the little girls Robier  
9 abused) hereby seek permission of this Court to allege punitive damages against defendant  
10 RCBSD pursuant to section 425.14 of the Code of Civil Procedure and section 3294 of the Civil  
11 Code.

12 **II. A CLAIM FOR PUNITIVE DAMAGES SHALL BE PERMITTED WHEN THERE**  
13 **EXISTS CLEAR AND CONVINCING EVIDENCE TO SUBSTANTIATE THE**  
14 **CLAIM**

15 According to Code of Civil Procedure section 425.14, plaintiffs must obtain leave of Court  
16 before alleging a claim for punitive damages against a religious organization. A motion for leave  
17 to amend the complaint to include punitive damages may be brought at any time there is sufficient  
18 evidence to make a prima facie showing. *See* Code Civ. Pro. § 425.14; *Rowe v. Superior Court*  
19 (1993) 14 Cal. App. 4<sup>th</sup> 1711, 1735. Once the court concludes that such a case can be presented at  
20 trial, it must permit plaintiffs to amend the complaint to include punitive damages. *Rowe*, 14 Cal.  
21 App. 4<sup>th</sup> at 1723.

22 The trial court "is not required to make any factual determination or to become involved in  
23 any weighing process beyond that necessarily involved in determining whether a prima facie case  
24 for punitive damages exists." *Id.* "In making this judgment, the trial court's consideration of the  
25 defendant's opposing affidavits does not permit a weighing of them against the plaintiff's  
26 supporting evidence, but only a determination that they do not, *as a matter of law*, defeat that  
27 evidence." *Id.* The purpose of this statute is to protect religious organizations from the expense of  
28 defending against punitive damages claims for which plaintiffs can show *no* likelihood of success.  
*Id.*

1 **III. PLAINTIFFS ARE ENTITLED TO PUNITIVE DAMAGES AGAINST THE**  
2 **DIOCESE BASED ON WRONGFUL ACTS OF THE PRIEST PERPETRATOR**

3 According to §3294(b) of the California Civil Code:

4 An employer shall not be liable for damages pursuant to subdivision  
5 (a), based upon acts of an employee of the employer, unless the  
6 employer had advance knowledge of the unfitness of the employee  
7 and employed him or her with a conscious disregard of the rights or  
8 safety of others or authorized or ratified the wrongful conduct for  
9 which the damages are awarded or was personally guilty of  
10 oppression, fraud, or malice. With respect to a corporate employer,  
11 the advance knowledge and conscious disregard, authorization,  
12 ratification or act of oppression, fraud, or malice must be on the part  
13 of an officer, director, or managing agent of the corporation.

14 Construing this statute, a Court of Appeal has held that retaining an unfit employee is a strong  
15 indicator of liability for punitive damages: "While maintaining a wrongdoer employee in the  
16 service of the employer standing alone, does not make the employer liable, it indicates the  
17 employer's approval of the employee's course and with other acts will make the employer liable in  
18 punitive damages." *Coats v. Construction & General Laborers Local No. 185* (1971) 15  
19 Cal.App.3d 908, 916.

20 **A. The Diocese Had Advance Notice of Robier's Unfitness As A Priest**

21 Father Franz Robier moved to Los Angeles from Brazil in 1955. When he arrived in Los  
22 Angeles, he stayed at the St. Columbkille rectory, and applied for cleric faculties within the Los  
23 Angeles Archdiocese, a large diocese with more than 250 parishes. An anonymous individual sent  
24 a letter to the Roman Catholic Archdiocese of Los Angeles ("RCALA"), expressing concern about  
25 Robier's fitness for parish ministry.<sup>1</sup> (See Exh. 1.) The author wrote:

26 I know from my personal observation that the Father's private life  
27 and conduct is not in accord with the Catholic church and I feel you  
28 should know this and check his past and history well.

At the time of his application, Auxillary Bishop Timothy Manning and the Board of  
Consultors both noted that Father Robier had an unusual two year leave of absence. On March 29,  
1955, the Board of Consultors met, discussed and rejected Robier's application. (See Exh. 3,

<sup>1</sup> The letter was produced in response to a request for Father Robier's personnel records. The Roman Catholic Archdiocese of Los Angeles verified that the letter is a true and correct copy which had been maintained in archival records within the Archdiocese of Los Angeles. See Decl. and attached Exhibit 2, Defendant Archdiocese of Los Angeles' Response to Requests for Admission.

1 Meeting of the Archdiocesan Consultors.) Bishop Manning sent a formal notice of rejection on  
2 March 31, 1955. (See Exh. 4, letter from Manning to Robier dated March 31, 1955.)

3 On May 7, 1955, Robier next made application on St. Columbkille's letterhead to RCBSD.  
4 (See Exh. 5, letter from Robier to Bishop Buddy.) Three days later, Bishop Charles Buddy  
5 acknowledged his letter and assured Robier that he would be given an appointment in San Diego.  
6 (See Exh. 6.) Bishop Buddy, knowing that Robier was living in a Los Angeles parish (St.  
7 Columbkille), had access to the information available to RCALA, including the anonymous letter  
8 pointing out Robier's questionable conduct. Nonetheless, Bishop Buddy officially received him as  
9 a priest in the San Diego Diocese on May 17, 1955. (See Exh. 7, announcement from Rev. Donald  
10 Doxie, Secretary to the Bishop.)

11 **B. Between 1955 and 1957 Robier Routinely Abused Little Girls**

12 In October 1955, defendant RCBSD appointed Robier as an assistant to plaintiffs' parish,  
13 Holy Spirit Church. At that time, Robier was 43 years old and plaintiffs were between the ages of  
14 6 and 10. He abused them at multiple locations, including their home, the beach, the drive-in  
15 theater, his car, and Holy Spirit Church.

16 Inside Plaintiffs' home, Robier fondled Mary Ann's genitals inside her shirt and  
17 underpants; he had her sit on his lap and digitally penetrated her vagina while fondling her breasts;  
18 he forced her to rub his penis while he fondled her; he took off her underpants and made her open  
19 her legs to access her vagina (with his hands and eyes); he rubbed his penis against her body and  
20 her vagina; he inserted the tip of his penis into her vagina. (See Exh. 8, Depo. of Mary Ann M. at  
21 83:17-92:15, 104:17-107:16.)

22 Robier forced Irene G. to sit on his lap and took her underpants off; he fondled her and  
23 digitally penetrated her vagina; he forced her to rub his penis. (See Exh. 9, Depo. of Irene G. at  
24 96:4-101:4, 106:18-108:15, 110:4-23.) He did the same to seven-year-old Marion P. and six-year-  
25 old Marie C. When the girls resisted, he physically overcame them.

26 Robier took the children to drive-in movies, where his abuse also followed a routine.  
27 Robier sat in the front seat with two of the girls while the other two sat in back; he molested the  
28 child immediately next to him. When finished with the first victim he moved on to the next. Even

1 if one child was not herself being physically abused at that moment, she would nevertheless have  
2 to experience her sister's rape, while either waiting to be molested herself or having just been  
3 assaulted. (Exh. 8, 64:23-81:2, 107:17-108:6; Exh. 9, 111:4-112:24, 114:16-118:4; Exh. 10,  
4 137:22-140:4.)

5 Robier also took the girls to the beach, where he forced the girls to lie down on a beach  
6 towel with him so he could assault them. He digitally penetrated Mary Ann M.'s vagina, fondled  
7 her genitalia, and forced her to rub his penis. He took Irene G. out into the deep water and  
8 penetrated her with his finger there, refusing to take her back until he had satisfied himself. As he  
9 had at movies, Robier took turns assaulting each girl. (See Exh. 8, 93:2-100:22, Exh. 9, 119:6-  
10 124:7.)

11 **C. Defendant RCBSD Actually Knew About The Abuse As Early As 1955**

12 The two older sisters, Mary Ann M. and Irene G. put defendant Archdiocese on notice of  
13 the sexual assaults. In Mary Ann M.'s case, she told the parish priests during confession at Holy  
14 Spirit Church. (See Exh. 8, 115:13-116:4, 118:7-122:19.) Irene G. did the same, telling  
15 Monsignor O'Leary and Father Robier about the molestation and abuse during confession. (See  
16 Exh. 9, Depo of Irene G. at 130:9-133:7.) When she put them on actual notice of the abuse,  
17 "Monsignor O'Leary told plaintiff Irene G. not to lie because it was a sin." *Id.* Likewise, "Father  
18 Robier told her that God would punish her if she told anyone else." *Id.* In addition, given the  
19 open and obvious sexual abuse, Irene G. believes that nuns employed at Holy Spirit Church were  
20 also aware of the abuse. *Id.*

21 In the unreleased cases involving Betty P., Sharon P., and Kathleen P., discovery has  
22 revealed that, like plaintiffs, they reported Robier's sexual abuse to other priests. These  
23 complaints occurred before Father Robier was sent to Via Coeli, a monastery located in Jemez  
24 Springs, New Mexico which, at the time, offered treatment for priests who molested children.  
25 (See Decl. of Richard Schoenberger.) These victims, one of whom told another priest about the  
26 abuse as early as 1955, are scheduled for depositions the week of December 4, 2006. (Ibid.)

27 ///

28 ///

1           **D.     Bishop Buddy's Letter of September 28, 1957 Proves That Father Robier Was**  
2           **Sent To Via Coeli Because He Was Sexually Molesting Children**

3           On September 28, 1957, after several girls had reported the abuse, the Bishop of San  
4           Diego, Reverend Charles Buddy, sent a letter to Reverend Gerald Fitzgerald, the founder of Via  
5           Coeli, regarding Father Robier. (See Exh. 11.) In the letter, Bishop Buddy - the Diocese's  
6           highest-ranking agent - effectively acknowledged Father Robier's sexual abuse. He wrote,  
7           "Recently, however, [Robier] has made some mistakes that require what Your Paternity has to  
8           give in spiritual exercises." Not only did Buddy know about the misconduct, but so many people  
9           in the church knew as to make Robier unfit to work in San Diego: "The mistake here has caused  
10          so much talk that my fear is [Robier's] usefulness has terminated in these parts." Buddy goes on  
11          essentially to banish Robier from San Diego. He writes, "If he has learned a lesson of discretion,  
12          he will be a very valuable priest for some other Bishop." (Emphasis added.)

13           **E.     Defendant RCBSD Knew In 1957 That Via Coeli Treated Priests Who**  
14           **Sexually Abused Children**

15          By 1957, Bishop Buddy was well aware of the services Via Coeli offered. For ten years,  
16          he had exchanged correspondence with its founder, Father Gerald Fitzgerald, regarding the  
17          treatment program. For example, on January 29, 1949, Reverend Fitzgerald wrote a letter to  
18          Bishop Buddy in which he stated:

19                   I refer to the Via Coeli Monastery which was established in the  
20                   Archdiocese of Santa Fe for the physical and spiritual rehabilitation  
21                   of priests, both diocesan and order men who have been impelled to  
22                   discontinue their priestly duties. (Exh. 12.)

23          In a June 21, 1953 letter, to Bishop Buddy, Rev. Fitzgerald describes the priests that Via  
24          Coeli serves as "the most abject and despised of men." (Exh. 13, letter from Fitzgerald to Buddy.)

25          In August 1956, the Diocese received materials from Via Coeli which describe the  
26          monastery's true purpose (Exh. 14):

27                   "Via Coeli [has] provided a hospice for priests in need of spiritual,  
28                   mental and physical guidance," and "to help solve the grave problem  
                  affecting the welfare of brother priests in need of rehabilitation..."

                In a letter dated August 15, 1956 (also in RCBSD's possession at the time) Rev. Fitzgerald

1 wrote: "There, but for the grace of God, go I'. Some time in our priesthood we would have  
2 murmured this prayer of compassion upon learning of a priest astray. We may even have had the  
3 sad duty of reassuring an aged mother and father that their son would, God willing, return to his  
4 flock one day." (Exh. 15.)

5 By 1954, Bishop Buddy had apparently grown to rely on Via Coeli. In response to a  
6 request for donations, he writes to Rev. Fitzgerald as follows:

7 Your beautiful appeal on the feast of St. Joseph cannot be deferred,  
8 especially because this Diocese is so deeply indebted to you.  
(Emphasis added.) (Exh. 16.)

9 In a letter dated February 19, 1955, Father Fitzgerald honed in on the character of those  
10 receiving treatment:

11 The work is progressing steadily with as good a measure of success  
12 as can be expected in a field that deals directly with the instability  
13 inherent since the Garden of Eden in the human will. (Emphasis  
14 added.) (Exh. 17.)

14 In context, there can be little doubt as to why Robier spent a month at Via Coeli.

15 **F. The San Diego Diocese's Second In Command, The Reverend Monsignor**  
16 **Steven Callahan, Has Twice Testified Under Oath That He Believes Father**  
17 **Robier Was Sent To Via Coeli Because He Was Molesting Little Girls**

18 Rev. Steven Callahan, the present Vicar General in San Diego, holds a degree in Canon  
19 Law, an undergraduate degree in Religious studies and a Master's degree in Moral and Religious  
20 Science. He has addressed complaints of sex abuse for the RCBSD since 1990 and was the  
21 RCBSD's designee as the person most qualified to testify regarding Robier. He has reviewed  
22 Robier's extensive personnel file, spoken to several of Robier's victims, and since 1990, provided  
23 pastoral outreach to victims of sexual abuse, including some of Robier's victims. He is second in  
24 command to the Bishop and has signed the verifications to the discovery propounded in the  
25 subject case. In 2004, Father Callahan personally compiled a list of substantiated claims of sexual  
26 abuse by priests in the San Diego Diocese for the years 1950-2003 intended to determine the  
27 nature and scope of the problem of sexual abuse within the Catholic Church in the United States.  
28 There is no one currently affiliated with the San Diego Diocese who is more intimately familiar  
with allegations of Robier's sexual abuse than Father Callahan. (Exh. 18, Depo of Callahan in

1 *Mary Ann M.* at 84:13-20; 106:14-107:14, 108:2-110:25; 123:9-22; Exh. 19, Declaration of  
2 Callahan in *Melanie H.* ¶¶1-10, 15-20.)

3 Based on his review of all pertinent materials, his discussions with Robier's victims and his  
4 training, education and experience, Father Callahan has twice testified that, in his opinion, Bishop  
5 Buddy sent Robier to Via Coeli because Robier was sexually abusing children.

6 Q. Did you form any-have you formed any opinions, based on  
7 your experience, as to why [Robier] was there [at Jemez  
8 Springs]?

8 A. I did.

9 Q. And what was your opinion?

10 A. Given the complaint that came forward, I believe that he was  
11 there because of a problem with molesting children.

12 (Exh. 20, Depo. of Rev. Steven Callahan at 126:14-24 (dated July 14, 2005 in *Melanie H.*  
13 case.)

14 As importantly, Father Callahan testified that, in his opinion, the RCBSD knew Via Coeli  
15 offered treatment for priests who molested children during the period of time when Robier was  
16 sent there. (*See id.* at 126:22-127:2.)

17 **G. Robier Severally Abused No Fewer Than Eight Other Little Girls Before**  
18 **September Of 1957**

19 Finally, no fewer than eight other little girls were victims of Robier's sexual assaults from  
20 1955 until he was sent to Jemez Springs. (*See Decl.* of Richard Schoenberger.) This compelling  
21 circumstantial evidence removes any possible doubt as to why this priest was sent to Via Coeli.

22 **1. RCBSD Returned Robier To Clergy Service Without Supervision On**  
23 **October 31, 1957**

24 On October 29, 1957, Robier wrote to Bishop Buddy from Via Coeli in Jemez Springs,  
25 asking for a second chance (Exh. 21):

26 I made my retreat...and I beg Your Excellency to give me another  
27 change (sic) and to call me back to San Diego.

28 In response, Bishop Buddy returned Father Robier to Diocesan service, but not to San

1 Diego. Instead, he transferred Robier to the St. Joan of Arc Church in Victorville on October 31,  
2 1957. (See Exh. 22, letter from Buddy to Robier.) Between 1957 and 1959, Robier was  
3 transferred to three different churches. After spending about ten months at Victorville, the  
4 Archdiocese moved him to Ontario for seven months, and then on to San Bernardino. (See Exh.  
5 22, Robier's Personal Record.)

6 Throughout 1957 to 1959, Robier returned to San Diego multiple times and stayed at the  
7 Holy Spirit Church rectory. During his return visits to San Diego, he continued to molest the girls  
8 at home, at the beach and at the drive-in. (Exh. 8, 103:3-108:6; Exh. 10, 116:22-118:7.)  
9 Defendant RCBSD never monitored or supervised his return visits to San Diego. Defendant never  
10 prevented Robier from molesting plaintiffs during each of these visits. As egregiously, Robier  
11 continued to molest other little girls without any consequence whatsoever. (See Declaration of  
12 Richard H. Schoenberger.)

13 **H. Defendant RCBSD's Maintenance Of Robier As A Priest With Unfettered**  
14 **Access To Children Constitutes Malice And Oppression**

15 An employer may be liable for punitive damages "where it is proven by clear and  
16 convincing evidence that the defendant has been guilty of oppression, fraud, or malice." Civ.  
17 Code § 3294(a). "The words, oppression, fraud, or malice are in the *disjunctive* and any of them  
18 may be express or implied." *Oakes v. McCarthy Co.* (1968) 267 Cal.App.2d 231, 262-63  
19 (emphasis in original; internal citations omitted).

20 "Malice" is "despicable conduct which is carried on by the defendant with a willful and  
21 conscious disregard of the rights or safety of others." Civ. Code § 3294(c)(1). "Oppression" is  
22 "despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of  
23 that person's rights." Civ. Code § 3294(c)(2). "Despicable conduct is conduct which is so vile,  
24 base, contemptible, miserable, wretched or loathsome that it would be looked down upon and  
25 despised by ordinary decent people." *Mock v. Michigan Millers Mutual Ins. Co.* (1992) 4  
26 Cal.App.4<sup>th</sup> 306, 331.

27 "Malice does not require actual intent to harm." *Angie M. v. Superior Court* (1955) 37 Cal.  
28 App. 4<sup>th</sup> 1217, 1228. "A conscious disregard for the safety of others may constitute the malice

1 necessary to sustain a claim for punitive damages." *Taylor v. Superior Court* (1979) 24 Cal.3d  
2 890, 895. "In order to justify an award of punitive damages on that basis, the plaintiff must  
3 establish that the defendant was aware of the probably dangerous consequences of his conduct,  
4 and willfully and deliberately failed to avoid those consequences." *Blegen v. Superior Court*  
5 (1981) 125 Cal. App.3d 959, 962-963.

6 As an example, in *O'Hara v Western Seven Trees Corp.* (1977) 75 Cal.App.3d 798,  
7 defendant landlord was held subject to a claim for punitive damages. *Id.* at 802. While defendant  
8 sought tenants, it knew that a serial rapist repeatedly victimized tenants on the land and that future  
9 attacks were likely. *Id.* Still, when plaintiff sought a rental unit, defendants represented that the  
10 premises were safe. *Id.* When plaintiff fell victim to the rapist, the Court of Appeal held that a  
11 claim for punitive damages against the defendant was proper. *Id.* at 806.

12 Repeatedly exposing children to a man who has a known propensity of abusing children,  
13 and plaintiffs in particular, is exactly the "vile, base, contemptible, miserable, wretched or  
14 loathsome" conduct that "ordinary and decent people" would despise. *Mock* (1992) 4 Cal.App.4<sup>th</sup>  
15 at 331. Defendant RCBSD ratified and authorized the perpetrator's sexual abuse by permitting  
16 Father Robier to return to San Diego after he had been transferred to Victorville, to stay at the  
17 rectory at Holy Spirit Church during these return visits, and to molest plaintiffs during these return  
18 visits.

#### 19 IV. CONCLUSION

20 There is ample evidence to support a claim for punitive damages. Defendant RCBSD  
21 acted with conscious disregard for plaintiffs' safety when it willfully and deliberately failed to  
22 protect the young girls from Robier's sexual abuse after gaining reasonable notice of the abuse.  
23

24 Dated: November 28, 2006

WALKUP, MELODIA, KELLY,  
WECHT & SCHOENBERGER

  
RICHARD H. SCHOENBERGER  
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1 **PROOF OF SERVICE (CCP 1013a, 2015.5)**

2 I am over the age of eighteen years and not a party to the within action; my business  
3 address is and I am employed at Walkup, Melodia, Kelly, Wecht & Schoenberger, 650 California  
4 Street, San Francisco, California 94108.

5 On the date below I served the following document(s), the original of which was/were  
6 produced on paper purchased as recycled, in accordance with Rules of Court §201(b):

7 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR**  
8 **LEAVE TO AMEND COMPLAINT TO ALLEGE PUNITIVE DAMAGES AGAINST**  
9 **DEFENDANT DIOCESE OF SAN DIEGO**

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25  BY MAIL. I caused such envelope with postage thereon fully prepaid to be placed in the  
26 United States mail at San Francisco, California.

27  BY PERSONAL SERVICE. I caused such document(s) to be delivered by hand to the  
28 office of the person(s) listed above.

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attached. The names and facsimile numbers of the person(s) are as set forth above.

I declare under penalty of perjury that the foregoing is true and correct. Executed on  
November 28, 2006, at San Francisco, California.

  
LORI McCOMBE

