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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
13 **IN AND FOR THE COUNTY OF LOS ANGELES**

14 Coordinated Proceeding Special Title (Rule  
15 1550 (b))

16 **THE CLERGY CASES II**

17 John Roe 17. Individually

18 v.  
19 Plaintiff.

20 Defendant Doe 1, Diocese; and Does 2  
21 through 100 inclusive,  
22 Defendants.

23 **CASE NO.:** GIC 823004  
24 Judicial Council Coordination Proceeding  
25 Number 4297 - Clergy II

26 **MEMORANDUM OF POINTS AND**  
27 **AUTHORITIES IN SUPPORT OF**  
28 **MOTION FOR PUNITIVE DAMAGES**

**Date:** 12/12/06  
**Time:** 8:30 a.m.  
**Dept:** 20  
**Judge:** Haley J. Fromholz  
**Trial:** 1/17/07  
**Judge:** John S. Einhorn

**MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR PUNITIVE DAMAGES**

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1           **I. INTRODUCTION**

2           Plaintiff seeks permission of this Court to allege punitive damages against the Roman  
3           Catholic Bishop of San Diego (Diocese) pursuant to section 425.14 of the Code of Civil  
4           Procedure. As discussed below, the facts in the case show there is sufficient evidence to permit  
5           the claim for punitive damages to go to a jury because the Diocese is guilty of oppression, fraud,  
6           and malice, and the Diocese acted in conscious disregard for the rights and safety of others.  
7           Moreover, the Diocese was aware of, and ratified, Fr. Rodrigue's sexual abuse of young male  
8           parishioners, taking no action to prevent future conduct until after the abuse of Plaintiff.

9           The conduct of Roman Catholic institutions in dealing with accusations of childhood  
10          sexual abuse has long been colored by a desire to "maintain strict secrecy about clergy sexual  
11          abuse." (Plaintiff's Exhibit 1, Declaration of Thomas Doyle at ¶ 17.) The "common justification  
12          for such secrecy has been the protection of reputations and the avoidance of scandal. There  
13          appears to have been little, if any concern for actual or potential victims." (Declaration of  
14          Thomas Doyle at ¶ 17.) Instead, the "actual motivation" of the Church "has been to avoid  
15          damaging publicity for the bishops while trying to maintain the hierarchy's positive image."  
16          (Declaration of Thomas Doyle at ¶ 15.)

17          A report by the National Review Board for the Protection of Children and Young  
18          People similarly found that "[F]aced with serious and potentially inflammatory abuses, Church  
19          leaders placed too great an emphasis on the avoidance of scandal in order to protect the  
20          reputation of the Church . . ." (Plaintiff's Exhibit 2, A Report on the Crisis in the Catholic  
21          Church in the United States at 107.) The Roman Catholic Bishop of San Diego's treatment of  
22          Father Edward Anthony Rodrigue presents a quintessential example of that motivation.

23          The Diocese chose secrecy and the avoidance of scandal over the protection of young  
24          and vulnerable parishioners. In doing so, the Diocese acted with willful and conscious disregard

25  
26          \_\_\_\_\_  
27          <sup>1</sup> The National Review Board for the Protection of Children and Young People was  
28          established by the United States Conference of Catholic Bishops, and issued A Report on the  
        Crisis in the Catholic Church in the United States on February 27, 2004. Every Bishop of every  
        Diocese within the United States is mandatorily required to be a member of the United States  
        Conference of Catholic Bishops. (Plaintiff's Exhibit 3, Deposition of Robert Brom, at p. 9:19 -  
        10:4.)

1 of the safety of Plaintiff, as well as 100-200 additional boys who were sexually abused by Father  
2 Edward Anthony Rodrigue after the Diocese had already become aware of Fr. Rodrigue's  
3 insatiable sexual appetite for young boys; thereby rendering the Diocese liable for punitive  
4 damages.

5 **II. PLAINTIFF MUST BE ALLOWED TO ALLEGE A CLAIM FOR PUNITIVE**  
6 **DAMAGES AGAINST THE DIOCESE.**

7 Code of Civil Procedure section 425.14 provides that no claim for punitive or  
8 exemplary damages may be pled unless permitted by court order after the plaintiff brings a  
9 motion to amend the complaint. Section 425.14 requires only that a plaintiff demonstrate the  
10 existence of sufficient evidence to establish a prima facie case<sup>2</sup> for punitive damages, enough to  
11 sustain a favorable decision if the evidence submitted be credited under the clear and convincing  
12 standard. *Rowe v. Superior Court* (1993) 15 Cal.App.4th 1711, 1722. In considering the  
13 evidence, the trial court "is not required to make any factual determination or to become involved  
14 in any weighing process beyond that necessarily involved in determining whether a prima facie  
15 case for punitive damages exists." *Id.* Once the court concludes that such a case can be  
16 presented at trial, it must permit the proposed amended pleading to be filed. *Id.* In making this  
17 judgment, the court's consideration of the defendant's opposing affidavits *does not permit a*  
18 *weighing of them against the plaintiff's supporting evidence.* but only determination that they do  
19 not, as a matter of law, defeat that evidence. *Id.* Moreover, a party should be free to renew a  
20 properly denied motion on subsequent, timely discovery of additional evidence. *Id.* at 1735. In  
21 other words, section 425.14 is to protect religious organizations from the expense of defending  
22 against punitive damage claims for which a plaintiff can show *no* likelihood of success. *Id.* at  
23 1722.

24 "California has an interest in protecting its children from sexual abuse." *Archdiocese of*  
25 *Milwaukee v. Superior Court* (2003) 112 Cal.App.4th 423, 443. In this case, the Diocese of San  
26 Diego consciously disregarded the risk it created to Catholic boys, fraudulently concealed its  
27

28  

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<sup>2</sup> "[A] prima facie showing is one that is sufficient to support the position of the party in question. [Citation.] No more is called for." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 851.

1 knowledge of Fr. Rodrigue's sexual abuse, and misrepresented that Fr. Rodrigue was a man who  
2 could be trusted with children. The Diocese knew of Fr. Rodrigue's unfitness, but continued to  
3 put him with children, ratified his conduct, and through its fraud and complete disregard for the  
4 rights and safety of little boys, was itself guilty of malice and oppression. As a result, Plaintiff  
5 can establish a prima facie showing of entitlement to punitive damages against the Roman  
6 Catholic Bishop of San Diego, a corporation sole.

7 **III. PLAINTIFF CAN RECOVER PUNITIVE DAMAGES AGAINST THE**  
8 **DIOCESE BASED ON THE WRONGFUL ACTS OF THE PRIEST**  
9 **PERPETRATOR.**

10 Pursuant to Civil Code section 3294(a), a plaintiff may recover punitive damages  
11 against a defendant who has been guilty of oppression, fraud, or malice. Civil Code § 3294(a).  
12 The words oppression, fraud, and malice as used in Civil Code section 3294(a) are disjunctive,  
13 and proof of any of them will support an award of punitive damages. *Oakes v. McCarthy Co.*,  
14 (1968) 267 Cal.App.2d 231, 262-63; *see also Stevens v. Superior Court* (1986) 180 Cal.App.3d  
15 605, 627 (a properly pleaded fraud claim will itself support recovery of punitive damages: no  
16 allegations of malice or intent to injure are required, because fraud is an alternative basis for  
17 recovery).

18 In addition to allowing punitive damages against a defendant based on direct liability,  
19 California also allows a plaintiff to recover punitive damages against an employer for the acts of  
20 an employee. Civil Code § 3294(b). Section 3294(b) provides that an employer shall not be  
21 liable for punitive damages based on the acts of its employee, "unless the employer had advance  
22 knowledge of the unfitness of the employee and employed him or her with a conscious disregard  
23 of the rights or safety of others or authorized or ratified the wrongful conduct for which the  
24 damages are awarded. . . ." Thus, "[I]f the employer after knowledge or opportunity to learn  
25 of the agent's misconduct retains the wrongdoer in service, the employer may make himself  
26 liable in punitive damages." *Coats v. Construction & General Laborers Local No. 185* (1971)  
27 15 Cal.App.3d 908, 914 (bold emphasis added.)

28  
According to *Heeks v. Baker & McKenzie* (1998) 63 Cal.App.4th 1128, 1151:  
Subdivision (b) [of Civil Code § 3294] authorizes the imposition of punitive  
damages on an employer in three situations: (1) when an employee was guilty

1 of oppression, fraud or malice, and the employer with advance knowledge of the  
2 unfitness of the employee employed him or her with a conscious disregard of the rights  
3 and safety of other. (2) when an employee was guilty of oppression, fraud or malice,  
4 and the employer authorized or ratified the wrongful conduct, or (3) when the employer  
5 was itself guilty of the oppression, fraud or malice.

6 The Diocese is clearly liable for punitive damages under any of the three bases for  
7 employer liability discussed in *Heeks*.

8 **A. The Diocese willfully employed the Perpetrator despite knowledge that he  
9 had acted, and would continue to act, in conscious disregard of the safety of  
10 others, and was guilty of fraud, oppression and malice.**

11 If an employee has acted in a manner that would subject himself to punitive damages,  
12 and the employer was aware of the employee's punishable conduct and continued to employ him  
13 without regard to the safety of others, punitive damages may be imposed on the employer. *Heeks*  
14 63 Cal.App.4th at 1151. Over the course of nearly two decades, Fr. Edward Anthony Rodriguez  
15 sexually abused scores of children while serving as a priest of the Roman Catholic Bishop of San  
16 Diego. (Plaintiff's Exhibit 4. Deposition of Edward Anthony Rodriguez, at p. 550:3-12.) In fact,  
17 beginning in the late 1950s or early 1960s, while Rodriguez was still in seminary, and continuing  
18 until the late 1970s when Fr. Rodriguez was transferred to the Roman Catholic Diocese of San  
19 Bernardino, the Priest may have molested more than 150 young boys. The Perpetrator's conduct  
20 ranged from fondling of his victim's genitals over their clothes, all the way to acts of sodomy and  
21 oral copulation. (Plaintiff's Exhibit 4. Deposition of Edward Anthony Rodriguez, at pp. 153:11-  
22 19, 420:17-20.) There can be no doubt that the Perpetrator, by using his position of authority to  
23 sexually abuse members of a vulnerable population, acted with malice and oppression.

24 It is equally clear that the Diocese was aware of these actions, and stood quietly by  
25 while so many young boys were victimized. The Diocese first received notice of the  
26 Perpetrator's unfitness prior to his ordination, yet employed him nonetheless. (See Plaintiff's  
27 Exhibit 5. Deposition of Thomas Rodriguez, at p. 323:23 - 324:5.) After endowing the Perpetrator  
28 with the faculties of a Roman Catholic Priest, the Diocese received notice, on several occasions,  
of the Perpetrator's unfitness, but took no action to curb the conduct in the future. As such, the  
Diocese of San Diego is liable for punitive damages.



1 Pen. Code §§ 266j, 285(b)(1), 285(b)(2), 285(c), 286, 288(a), 288(b), 288a(b)(1), 288a(b)(2),  
2 288a(c), 289(h), 289(i), 289(j), and 647.6.

3 The perpetrator's concern for satisfying his own deviant desires, at the expense of the  
4 grievous injury caused to his young victims, clearly demonstrates his criminal indifference to the  
5 safety of the young children of his various parish assignments. The Perpetrator acted in blatant  
6 disregard of the recognized vulnerability of children, and preyed upon their susceptibility to  
7 sexual abuse by adults. These acts were committed in clear contravention of the strong, and well  
8 known, public policy protecting children from sexual abuse, for the purpose of the Perpetrator's  
9 own sexual gratification without reference to the damage caused to his victims.

10 In *Angie M. v. Superior Court* (1995) 37 Cal.App.4th 1217, 1228, the court found that,  
11 with respect to sexual misconduct with a minor, "it cannot be said as a matter of law that the  
12 alleged behavior was not so 'vile,' 'base,' or 'contemptible' that it would not be 'looked down  
13 upon and despised by ordinary decent people.'" As a result, such evidence provides ample basis  
14 to make a prima facie finding that Edward Anthony Rodriguez acted with malice and would be  
15 liable for punitive damages.

16 2. The Diocese was repeatedly made aware of the Perpetrator's  
17 unfitness, but continued to place him in positions where he had  
unfettered access to children and a position of authority.

18 a. The Diocese was aware of Fr. Rodriguez's unfitness prior to his  
ordination

19 Edward Anthony Rodriguez began abusing children while he was a seminarian, being  
20 trained to serve as a priest within the Diocese of San Diego. (Plaintiff's Exhibit 4, Deposition of  
21 Edward Anthony Rodriguez, at pp. 79:2-83:23.) As a seminarian under the control of the Diocese,  
22 Rodriguez worked during the summers at his home parish of Our Lady of Sacred Heart in San  
23 Diego, California. (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez, at pp. 54:7-  
24 15.) Over a period of three or four years, Fr. Rodriguez sexually abused a male high school  
25 student who worked with the custodian at the parish's school. (Plaintiff's Exhibit 4, Deposition  
26 of Edward Anthony Rodriguez, at pp. 79:2-83:23.)

27 Evidence in this case indicates that the Diocese of San Diego was aware of Rodriguez's  
28 unfitness at that time, but ordained him nonetheless. Shortly before Anthony Rodriguez's

1 ordination, his brother, Thomas Rodriguez, was told by one of Anthony Rodriguez's fellow  
2 seminarians that the Diocese may hold the Perpetrator back from ordination due to his "sexual  
3 immaturity problems." (Plaintiff's Exhibit 5, Deposition of Thomas Rodriguez, at pp. 323:23 -  
4 324:5.) Moreover, in a psychological evaluation conducted in 1991, Dr. Joseph Malacharvil,  
5 Ph.D., noted that "[R]odrigue's] prolonged history of psychiatric treatment, inappropriate sexual  
6 behaviors, serious dearth of social skills bear witness to the possibility he was admitted to the  
7 priesthood mistakenly. It is quite possible that Fr. Rodriguez suffered from severe personality  
8 disorder prior to his ordination." (Plaintiff's Exhibit 6, 1991 Psychological Evaluation at 1-2.)  
9 Notwithstanding his obvious shortcomings and past sexual abuse of minors, the Perpetrator was  
10 ordained as a priest of the Roman Catholic Bishop of San Diego in March of 1962. (Plaintiff's  
11 Exhibit 7, Personal Record of Edward Anthony Rodriguez.) All seminary records of Fr.  
12 Rodriguez's psychological state of mind at that time have been willfully destroyed. (Plaintiff's  
13 Exhibit 19, Letter from Archbishop Quinn.)

14 **b. Notice of abuse in Encinitas, California**

15 The Diocese again gained actual knowledge that Fr. Rodriguez was sexually abusing  
16 children five years later. In 1967, Fr. Rodriguez admits to molesting several minor boys while  
17 assigned to St. John the Evangelist parish in Encinitas, California, from 1966 to 1967.  
18 (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez, at p. 150: 6-8.) Before his  
19 abrupt transfer from St. John's, the local Dean traveled to the parish and confronted Fr.  
20 Rodriguez.<sup>5</sup> (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez, at p. 170: 16-23.)  
21 The discussion contained "sexual intones," and ultimately, the Dean informed Fr. Rodriguez that  
22 \_\_\_\_\_

23 <sup>5</sup> A "Dean" presides over a deanery by the appointment of the Bishop. (Plaintiff's Exhibit  
24 8, Roman Catholic Diocese of San Diego, Diocesan Statutes, p. 14.) A deanery is a geographic  
25 area within the Diocese. The Dean is obligated to make such investigations the Bishop deems  
26 necessary, and to make an annual report to the Bishop "concerning events which occurred in each  
27 parish during the last year." (See Plaintiff's Exhibit 8, Roman Catholic Diocese of San Diego,  
28 Diocesan Statutes, p. 14.) Moreover, it is the obligation of the Dean to "see to it that the clerics  
in his district lead a life which is in harmony with their state of life." (Plaintiff's Exhibit 9, Code  
of Canon Law § 555 (1983).) Under the 1917 Code, this function was understood as requiring  
"pastoral surveillance" of the priests in the district. (Plaintiff's Exhibit 9, Commentary to Code  
of Canon Law § 555 (1983).) The Dean is also expected to "be concerned about the spiritual  
needs of the clergy of his vicariate and help priests experiencing problems. (*Id.*)

1 he was being transferred to a new parish. (Plaintiff's Exhibit 4, Deposition of Edward Anthony  
2 Rodriguez, at pp. 175:2 - 176:19.) Fr. Rodriguez understood the purpose and content of the  
3 discussion to revolve around his "sexual misconduct" with children. (Plaintiff's Exhibit 4,  
4 Deposition of Edward Anthony Rodriguez, at p. 175:2-25.) Since the Dean is the Bishop's  
5 designated representative in the deanery, and was obligated to report to the Bishop, the Bishop  
6 must be charged with the actual knowledge of Fr. Rodriguez's conduct, evidenced by the  
7 confrontation by the Dean.

8 **c. Notice of abuse in Calexico, California**

9 Following the confrontation with the Dean, Fr. Rodriguez was transferred to Our Lady of  
10 Guadalupe parish in Calexico, California. (Plaintiff's Exhibit 7, Personal Record of Edward  
11 Anthony Rodriguez.) Fr. Rodriguez admits to sexually abusing children at this assignment.  
12 (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez, at pp. 177:18 - 20.) The Bishop  
13 was again given actual knowledge of the Perpetrator's conduct, when a young parishioner who  
14 was sexually abused by Fr. Rodriguez reported that abuse to the Pastor, an Associate Pastor, and  
15 the housekeeper at Our Lady of Guadalupe parish in Calexico, in 1968 or 1969. (Plaintiff's  
16 Exhibit 10, Declaration of A. Richard Miranda, at ¶¶ 6, 7, and 8.) The young victim informed  
17 each individual that he had been spending the night with Fr. Rodriguez in the rectory. (Plaintiff's  
18 Exhibit 10, Declaration of A. Richard Miranda, at ¶¶ 6, 7, and 8.)

19 In either 1969 or 1970, another young boy who was sexually abused by Fr. Rodriguez  
20 reported the abuse to an Associate Pastor at Our Lady of Guadalupe parish. (Plaintiff's Exhibit  
21 11, Declaration of Raul A. Miranda, at ¶ 7.) The young victim reported that "Father Rodriguez  
22 was touching [his] privates and that [Rodrigue] was being naked with me." (Plaintiff's Exhibit  
23 11, Declaration of Raul A. Miranda, at ¶ 7.) The boy also informed the parish Pastor that he "did  
24 not want to be around Father Rodriguez any more." (Plaintiff's Exhibit 11, Declaration of Raul A.  
25 Miranda, at ¶ 8.) The complaints were not acted upon, and Fr. Rodriguez was not removed from  
26 Calexico until mid-1971. (Plaintiff's Exhibit 7, Personal Record of Edward Anthony Rodriguez.)

27 **d. Notice of abuse in Eagle Mountain, California**

28 In 1973 or 1974, while he was assigned to St. Augustine parish in Eagle Mountain,

1 California. Fr. Rodrigue became overwhelmed by his sexual difficulties and reported himself to  
2 the chanery in San Diego. (Plaintiff's Exhibit 6, 1991 Psychological Evaluation, at 2.) Fr.  
3 Rodrigue's difficulties included "fantasy involvement with minors and difficulty distinguishing  
4 feelings from actions." (Plaintiff's Exhibit 6, 1988 Psychological Evaluation, at 2.) During the  
5 same time period, a woman accused Fr. Rodrigue of sexually abusing children, and rumors  
6 circulated that Fr. Rodrigue had been the subject of an investigation. (Plaintiff's Exhibit 4,  
7 Deposition of Edward Anthony Rodrigue, at p. 241:12-19.)

8 In response to Fr. Rodrigue's conduct, the Diocesan Dean responsible for his  
9 supervision called Fr. Rodrigue on the telephone, and "said something of the nature that would  
10 lead one to believe there was an investigation." (Plaintiff's Exhibit 4, Deposition of Edward  
11 Anthony Rodrigue, at pp. 241:21 - 242:8.) The Dean also informed Fr. Rodrigue that he was  
12 concerned about his sexuality. (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodrigue,  
13 at p. 243:24 25.)

14 Ultimately, the Dean instructed Fr. Rodrigue to write a letter to the Diocesan Personnel  
15 Board, requesting a transfer from St. Augustine. (Plaintiff's Exhibit 4, Deposition of Edward  
16 Anthony Rodrigue, at pp. 261:15-21; 907:1-9.) It was not a direct order, but Fr. Rodrigue  
17 understood that to disobey the request "would have been murder." (Plaintiff's Exhibit 4,  
18 Deposition of Edward Anthony Rodrigue, at pp. 909:12-15.) Fr. Rodrigue wrote the letter, and  
19 shortly thereafter, he was removed from Eagle Mountain, and sent on a six week retreat.  
20 (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodrigue, at pp. 265:11-20)

21 **e. Notice of abuse at El Centro**

22 In 1975, Fr. Rodrigue was assigned as the Pastor of Our Lady of Guadalupe parish in El  
23 Centro, California. (Plaintiff's Exhibit 7, Personal Service Record of Edward Anthony  
24 Rodrigue.) The Perpetrator admits to abusing young boys at that assignment. (Plaintiff's Exhibit  
25 4, Deposition of Edward Anthony Rodrigue, at pp. 325:5-16.) After being abused, a young  
26 victim telephoned the Diocese's office and attempted to report that Fr. Rodrigue had hurt him.<sup>6</sup>

27  
28  

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<sup>6</sup> Incidental to his assignment as the Pastor of Our Lady of Guadalupe parish in El Centro,  
California, Fr. Rodrigue also administered Sacred Hearts of Jesus and Mary parish in Heber,  
California.

1 (Plaintiff's Exhibit 12. Deposition of John Roe 23, at pp. 29:2-17, 36:18-23.) He advised the  
2 female who answered the phone that he was calling from Our Lady of Guadalupe parish in El  
3 Centro, and that Fr. Rodriguez had hurt him, and touched him. (Plaintiff's Exhibit 12, Deposition  
4 of John Roe 23, at pp. 36:18-23.) The victim refused to identify himself. (Plaintiff's Exhibit 12,  
5 Deposition of John Roe 23, at pp. 36:24.) The recipient of the phone call responded that he  
6 should not speak that way about priests, and hung up. (Plaintiff's Exhibit 12, Deposition of John  
7 Roe 23, at pp. 36:24-37:7.)

8 Approximately two weeks later, Fr. Rodriguez abused the boy again. (Plaintiff's Exhibit  
9 12, Deposition of John Roe 23, at pp. 56:1-2.) And again, the victim phoned the Diocese,  
10 (Plaintiff's Exhibit 12, Deposition of John Roe 23, at pp. 53:12-15.) The boy reported that he  
11 was calling about Fr. Rodriguez at Our Lady of Guadalupe, and advised the male recipient of the  
12 call that the priest was hurting the altar boys, touching the altar boys, and requested that Fr.  
13 Rodriguez be removed from the parish. (Plaintiff's Exhibit 12, Deposition of John Roe 23, at pp.  
14 59:14-60:11.) When the boy declined to identify himself, the man told him not to make "calls  
15 like this." (Plaintiff's Exhibit 12, Deposition of John Roe 23, at pp. 59:14-60:11.)

16 While Fr. Rodriguez was assigned to El Centro and Heber in 1975 and 1976, several of  
17 the altar boys from Heber, California, informed their parents of the sexual abuse they suffered at  
18 the hands of Fr. Rodriguez, and another volunteer at the church. (Plaintiff's Exhibit 13,  
19 Deposition of [name redacted pursuant to protective order], at pp. 24:17-24.) Several parents of  
20 the abused children, as well as three or more of the minor victims, went to Calexico to complain  
21 to the Pastor of Our Lady of Guadalupe parish. (Plaintiff's Exhibit 13, Deposition of [name  
22 redacted pursuant to protective order], at pp. 25:18-25, 26:14-27:3.) The parents informed the  
23 Pastor, who was then the local Dean, of Fr. Rodriguez's sexual misconduct with the children.  
24 (Plaintiff's Exhibit 13, Deposition of [name redacted pursuant to protective order], at pp. 28:9-  
25 29:1.) The Dean promised that Fr. Rodriguez would be removed from ministry. (Plaintiff's  
26 Exhibit 14, Deposition of Carmen Colunga, at pp. 20:10-21:3.)

27 Fr. Rodriguez was then called before the Dean and informed of the allegations.  
28 (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez, at pp. 339:15-340:12.) Fr.

1 Rodriguez knew the allegations to be true, in that he had been sexually abusing children, and  
2 therefore did not deny them. (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez, at  
3 pp. 340:7-12.) The Dean informed Fr. Rodriguez that he had an appointment with the Bishop  
4 scheduled for the following day to discuss the allegations and Fr. Rodriguez's future. (Plaintiff's  
5 Exhibit 4, Deposition of Edward Anthony Rodriguez, at pp. 340:4-6.)

6 Fr. Rodriguez met with the Bishop, and was confronted with a letter written by angry  
7 parishioners from Heber. (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez, at pp.  
8 346:15-23.) Once again, Fr. Rodriguez did not deny the allegations against him. (Plaintiff's  
9 Exhibit 4, Deposition of Edward Anthony Rodriguez, at pp. 348:1-6.) The Bishop informed Fr.  
10 Rodriguez that he was no longer the Pastor of Our Lady of Guadalupe in El Centro. (Plaintiff's  
11 Exhibit 4, Deposition of Edward Anthony Rodriguez, at pp. 351:9-12.)

12 Father Rodriguez acted with malice, and with a criminal intent when he sexually abused  
13 dozens of children while serving as a Roman Catholic priest; thereby establishing his liability for  
14 punitive damages. The Diocese of San Diego was aware of Fr. Rodriguez's malicious conduct  
15 well before Plaintiff was abused, but took no actions to prevent a recurrence of that conduct.  
16 Even after the Diocese had received repeated notice of Fr. Rodriguez's sexual abuse of children, it  
17 declined to act, thereby evidencing an extreme and conscious disregard for the safety of others.  
18 The Diocese was clearly driven by a "motivation to avoid damaging publicity for the bishop[]  
19 while trying to maintain the hierarchy's positive image," and showed little or no concern for  
20 actual or potential victims. (*See* Plaintiff's Exhibit 1, Declaration of Thomas Doyle at ¶¶ 15,  
21 17.)

22 As a result, the Diocese of San Diego should be held liable for punitive damages under  
23 Civil Code § 3294(b), and the rule from *Weeks v. Baker & McKenzie*.

24 **B. The Diocese authorized or ratified the actions of the perpetrator, who was**  
25 **guilty of fraud, oppression and malice.**

26 "An employer is liable for the wilful and malicious acts of an employee which he has  
27 ratified. Failure to discharge an employee or agent guilty of oppressive acts toward patrons of  
28 the employer is in itself evidence to show ratification." *Coats* 15 Cal.App.3d at 914 citing  
*McCristian v. Popkin* (1946) 75 Cal.App.2d 249; *see also* *Murillo v. Rite Stuff Foods, Inc.*

1 (1998) 65 Cal.App.4th 833, 852. “The theory of ratification is generally applied where an  
2 employer fails to investigate or respond to charges that an employee committed an intentional  
3 tort, such as assault or battery.” *Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 170.  
4 “Ratification is a question of fact and may be proved by circumstantial evidence.” *Stra v.*  
5 *General Tire & Rubber Co.* (1983) 146 Cal.App.3d 152, 159.

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1. **The Diocese had actual knowledge that Fr. Rodrigue had sexually abused children, and did nothing to curb that conduct.**

The Diocese did far more than simply retain the Perpetrator after it became aware of his unlawful sexual abuse of young parishioners. When Fr. Rodrigue was confronted by the Diocesan Dean in 1967, he admonished the Perpetrator that “you have to be careful.” (Plaintiff’s Exhibit 4. Deposition of Edward Anthony Rodrigue, at pp. 170:16 - 172:7.) Fr. Rodrigue understood this statement to mean he should be “[c]areful about the company I keep and careful about having kids hanging around . . . .” (Plaintiff’s Exhibit 4. Deposition of Edward Anthony Rodrigue, at pp. 171:15 - 172:2.) That the Dean instructed Fr. Rodrigue to “be careful”, rather than to cease the conduct, shows that the Diocese was less concerned that Fr. Rodrigue was sexually abusing children than it was of the scandal that would arise if his actions came to light in the community.

This interpretation of the Dean’s instruction is consistent with the Diocese’s prior philosophy with respect to pedophiles. Ten years earlier, after another Roman Catholic priest serving within the Diocese of San Diego was accused of abusing children, he was sent to treatment with a religious order specializing in the treatment of priests’ problems. (Plaintiff’s Exhibit 15. Letter from Bishop Charles Buddy to the Paracletes.) The Bishop noted in a letter to the treatment facility that word of the priest’s conduct had traveled so fast as to render him virtually useless to the Diocese, but “if [the priest] has learned the lesson of discretion, he will be very valuable for some other Bishop”. (Plaintiff’s Exhibit 15, Letter from Bishop Charles Buddy to the Paracletes.)

Thus, in handling allegations of abuse by Fr. Rodrigue, the Diocese acted consistently with both its own, and the broader Roman Catholic institutional, practices of maximizing secrecy of the sexual misconduct by priests, and actually placed that secrecy above any concern that the

1 conduct actually cease; thereby ratifying the conduct.

2           **2. The Diocese continued to ratify Rodriguez's conduct by taking no**  
3           **action to stop his illegal sexual conduct.**

4           Despite knowledge that Fr. Rodriguez had sexually abused children in the past, the  
5           Diocese took no action to protect its young parishioners, including Plaintiff, from molestation.  
6           At no time prior to the sexual abuse of Plaintiff did the Bishop provide the Perpetrator with  
7           counseling. It was not until May of 1976, after numerous parishioners in Heber gave the Diocese  
8           repeated notice of Rodriguez's sexual abuse of their children, that the Perpetrator was sent for a  
9           psychological evaluation at the House of Affirmation, a treatment facility for Roman Catholic  
10          priests, located in Whittinsville, Massachusetts. (Plaintiff's Exhibit 16, Letter to Bishop Maher  
11          from the House of Affirmation (July 6, 1976).) Noticeably, the Diocese refrained from taking  
12          any action until the community at large became aware of the conduct, and the threat of scandal  
13          forced the Bishop's hand.

14          The treatment facility had no vacancies at that time, however, so Fr. Rodriguez was  
15          placed back into active ministry within the Diocese, at Our Lady of Soledad in Coachella,  
16          California. (Plaintiff's Exhibit 16, Letter to Bishop Maher from the House of Affirmation (July  
17          6, 1976); Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez at p. 363:6-10.) Fr.  
18          Rodrigue was not instructed to avoid contact with children during this period. (Plaintiff's  
19          Exhibit 4, Deposition of Edward Anthony Rodriguez, at p. 364:6-8.)

20          Four months later, Fr. Rodriguez was admitted to the House of Affirmation. (Plaintiff's  
21          Exhibit 17, Letter to Bishop Maher from the House of Affirmation (September 23, 1976).) Fr.  
22          Rodrigue received ineffective therapy that did not seem to address his problems with children. In  
23          fact, when he was discharged, the discharge summary referred only to treatment for  
24          "homosexuality," without once mentioning the sexual abuse of children.<sup>7</sup> (Plaintiff's Exhibit 18,  
25          House of Affirmation Discharge Summary.)  
26          The Diocese was cautioned that Rodriguez would need therapy when he was released  
27          from the House of Affirmation. (Plaintiff's Exhibit 18, House of Affirmation Discharge

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<sup>7</sup> It is possible that the use of the word "homosexuality" was a code word for sexual abuse of children, but those words were not used in keeping with the prevailing Roman Catholic determination to keep child molestation secret at all costs.

1 Summary). No therapy was provided. (Plaintiff's Exhibit 4, Deposition of Edward Anthony  
2 Rodrigue; at p.388:13-389:7.) At no time during his tenure with the Diocese of San Diego was  
3 Fr. Rodrigue instructed not to be alone with children. (See Plaintiff's Exhibit 4, Deposition of  
4 Edward Anthony Rodrigue, at p. 364:6-8.) Similarly, the parishioners at the parishes to which  
5 Fr. Rodrigue was assigned were never warned of the danger he posed to children.

6 In short, the Diocese of San Diego ratified Fr. Rodrigue's conduct by continually  
7 placing him in a position of authority, with unfettered access to children, despite actual and  
8 repeated knowledge of his past sexual abuse of children, and by refusing to provide him with  
9 counseling, or warning the parishioners of the danger he posed to their children.

10 **3. The Perpetrator's conduct was ratified again in 1977.**

11 The Pastor of St. George's parish in Ontario, California, also ratified the conduct of Fr.  
12 Rodrigue by permitting unfettered access to children, and a secluded room in which to perform  
13 his perverse acts. By 1977, when he was assigned to St. George's, Fr. Rodrigue had been  
14 accused of sexually abusing children on several occasions, and had been sent to the House of  
15 Affirmation for treatment.

16 Upon his initial assignment to St. George's, Fr. Rodrigue was given a room on the  
17 second floor of the rectory, along with each of the other priests assigned to the parish.

18 (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodrigue, at p. 425:16-20.) Shortly after  
19 the Perpetrator's arrival, the live-in housekeeper left, and was replaced by a housekeeper who did  
20 not live on site. (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodrigue, at p.425:16-  
21 20.) The housekeeper's quarters was located on the first floor of the rectory, behind the kitchen.  
22 (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodrigue, at p. 425:16-24.) The  
23 housekeeper's quarters had a separate, secluded entrance at the back of the rectory. (Plaintiff's  
24 Exhibit 4, Deposition of Edward Anthony Rodrigue, at p.425:16-24.)

25 Fr. Rodrigue approached the Pastor, and sought permission to move into the  
26 housekeeper's quarters. (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodrigue, at  
27 p.426:2-3.) Despite Rodrigue's history of sexually molesting children, the Pastor granted the  
28 request. (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodrigue, at p.425:16-426:3.)

1 The Perpetrator sexually molested children in his new room on the first floor of the rectory.  
2 (Plaintiff's Exhibit 4, Deposition of Edward Anthony Rodriguez, at p. 427:2-4.) Thus, despite  
3 actual knowledge that Fr. Rodriguez had sexually abused children in the past, the Pastor at St.  
4 George's ratified the Perpetrator's conduct by taking affirmative steps to make it easier for  
5 Rodrigue to obtain private access to children.

6 **C. The Diocese itself was guilty of fraud, oppression and malice.**

7 "Malice does not require actual intent to harm." *Angie M. v. Superior Court* (1995) 37  
8 Cal.App.4th 1217, 1228. "A conscious disregard for the safety of others may constitute the  
9 malice necessary to sustain a claim for punitive damages." *Taylor v. Superior Court* (1979) 24  
10 Cal.3d 890, 895. "In order to justify an award of punitive damages on that basis, the plaintiff  
11 must establish that the defendant was aware of the probably dangerous consequences of his  
12 conduct, and willfully and deliberately failed to avoid those consequences." *Blegen v. Superior*  
13 *Court* (1981) 125 Cal.App.3d 959, 962-63. Thus, a plaintiff need not prove that the defendant  
14 intended to injure the plaintiff. Instead, a defendant can be liable for punitive damages for the  
15 conscious disregard of the safety of others.<sup>8</sup>

16 In *O'Hara v. W. Seven Trees Corp. Intercoust Mgmt.* (1977) 75 Cal.App.3d 798, a  
17 management corporation knew about repeated rapes occurring on its property. Despite this  
18 knowledge, the management company claimed its property was safe in order to rent its  
19 apartments. Plaintiff was raped by the same serial rapist. The court held that this sufficiently  
20 alleged conscious disregard of plaintiff's safety, and that alleging punitive damages was proper.  
21 *Id.* at 806.

22 Similarly, the Diocese was aware of the frequent and repeated sexual abuse of children  
23 inflicted by Fr. Rodrigue, but continued to hold him out as a competent employee who could be  
24 trusted with the temporary care and custody of children of the various parishes to which he was  
25 assigned, including Plaintiff. The Diocese knew that Fr. Rodrigue posed a substantial risk to  
26 minor boys. The Diocese repeatedly put Fr. Rodrigue into further contact with young boys, and  
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<sup>8</sup> Evidence indicating that the defendant was aware of the probable consequences of his  
or her acts and willfully and deliberately failed to avoid those consequences is sufficient to  
establish conscious disregard of plaintiff's rights. *J.R. Norton Co. v. General Teamsters,*  
*Warehousemen & Helpers Union, Local 890* (1989) 208 Cal.App.3d 430, 444-45.

1 acted in conscious disregard for the rights and safety of minor boys, which resulted in the sexual  
2 abuse of Plaintiff. The Diocese's actions in covering up the criminal acts of a serial pedophile  
3 like Fr. Rodrigue were despicable. Decent ordinary people would look down upon and despise  
4 the Diocese's contemptible decision to cover up sexual abuse, to allow Fr. Rodrigue to continue  
5 to sexually abuse young boys, and to purposefully transfer Fr. Rodrigue from parish to parish  
6 while providing no warning to the parishioners of the danger he posed, and no instructions or  
7 warnings to the Perpetrator that he should avoid contact with children. The result of the  
8 Diocese's conduct was that dozens of young boys were needlessly subjected to Fr. Rodrigue, and  
9 were sexually molested as a result.

10 **1. The Diocese fraudulently destroyed documents relating to the**  
11 **Perpetrator's sexual abuse of children.**

12 The Diocese also subjected itself to liability for punitive damages by fraudulently  
13 destroying documents relating to Fr. Rodrigue as a means of furthering the secrecy of his actions  
14 and avoiding scandal, at the expense of his minor victims. In a letter from one of the  
15 Perpetrator's seminary professors to the Vicar General of the Diocese of San Bernardino, the  
16 professor noted that:

17 "Monsignor [name redacted pursuant to protective order] informed me on that occasion  
18 that he had destroyed the minutes of the faculty meetings and that he had destroyed some  
19 other [seminary] records. Consequently, it may not be easy for you to get exact  
20 information about the situation at the time of Father Rodrigue's ordination. I would like  
21 you to regard this information concerning the seminary records as confidential since there  
22 is no reason after so many years now to have this become widely known. . . ." (Plaintiff's  
23 Exhibit 19, Letter from Archbishop Quinn.)<sup>9</sup>

24 Among the items that should have appeared in Father Rodrigue's Seminary file are  
25 "psychological testing documents at the time of entrance into the seminary." (Plaintiff's Exhibit  
26 20, Letter to Maher.) These documents would have been particularly interesting in light of Dr.  
27 Malancharuvil's opinion that Fr. Rodrigue was likely suffering from severe personality problems  
28 prior to his ordination. (Plaintiff's Exhibit 6, 1991 Psychological Evaluation.)

29 In this case, Plaintiff has also uncovered numerous pages of documents regarding the  
30 Perpetrator's psychological treatment for childhood sexual abuse, which were neither produced  
31 nor reviewed by the court.

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<sup>9</sup> Notably, Father Rodrigue was ordained in 1962, and the seminary professor, who subsequently became the rector of the seminary, recognized the absence of the documents in June of 1964. (Plaintiff's Exhibit 7; Personal Service Record of Edward Anthony Rodrigue.)

1 by the Defendant nor listed on a privilege log. The absence of these critical documents  
2 demonstrates an adherence by the Diocese to a policy of document destruction designed to avoid  
3 scandal and solicit secrecy. The Perpetrator's file contains documents all the way back to his  
4 ordination, from assignment letters, to the letter seeking a transfer from Eagle Mountain. That  
5 numerous documents dealing with his treatment for sexual problems that were generated in the  
6 latter stages of Fr. Rodrigue's time in the Diocese of San Diego have been lost or destroyed is  
7 illustrative in light of the presence of many benign documents from earlier in the Perpetrator's  
8 career.

9 One document uncovered by Plaintiff was written by Fr. Rodrigue's treasurer at the House  
10 of Affirmation and specifically requested a return letter from the Diocese describing "Father  
11 Rodrigue's problems as perceived by the Diocese[.] This could include when they began and  
12 their progress, what is factual and what is rumored, your evaluation of his difficulties, and  
13 anything else that might be helpful." (Plaintiff's Exhibit 21, Letter to Bishop Maher from House  
14 of Affirmation (October 6, 1976).) Neither the letter from the House of Affirmation, nor the  
15 bishop's response was produced by Defendant. This evidences a systematic destruction of  
16 relevant documents designed to fraudulently prevent victims from attaining redress.

#### 17 **IV. CONCLUSION**

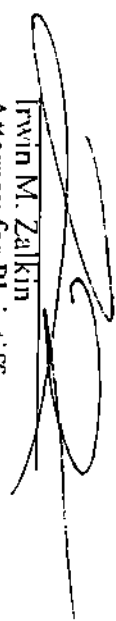
18 Plaintiff has met his burden by presenting sufficient evidence to permit his claim for  
19 punitive damages to go to a jury. Plaintiff has produced sufficient facts to demonstrate that a  
20 reasonable jury could award punitive damages against the Roman Catholic Bishop of San Diego.  
21 The Diocese can be held liable as Fr. Rodrigue's employer both on the basis that it knew of his  
22 malicious conduct and took no action, and based upon its own ratification of that malicious  
23 conduct. Further, the Diocese itself acted with conscious disregard of the rights and safety of  
24 others, when it continually reassigned Fr. Rodrigue to new assignments where he had access to a  
25 population with no idea of his propensity to molest young boys; thereby rendering itself liable for  
26 punitive damages based upon its own willful conduct. As a result, this Court should grant  
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1 Plaintiff's Motion to Amend to Add a Claim for Punitive Damages.

2 Respectfully submitted,

3 ZALKIN & ZIMMER, LLP

4 Dated: 11/15/01

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6 Irwin M. Zalkin  
7 Attorney for Plaintiff  
8 John Roe 17

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