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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 13 COUNTY OF LOS ANGELES, CENTRAL DISTRICT

15	Coordinated Proceeding)	JUDICIAL COUNCIL COORDINATION
	Special Title (Rule 1550(b)))	PROCEEDING NO.: 4286
16)	
	THE CLERGY CASES I)	Trial Coordinating Judge:
17)	The Honorable Haley J. Fromholz
)	Department 20
18)	
	This Document Relates to Orange County Case)	Complaint Filed: November 5, 2003
19	NO. 03CC00509:)	Trial Date: November 6, 2006
)	
20	MAX LOUIS FISHER, DAVID ANTHONY)	PLAINTIFFS' NOTICE OF MOTION AND
	GUERRERO, JOHN ERIC HABERMANN,)	
21	CHRISTOPHER EDUARDO)	
	HUICOCHEA, JOHN JOSEPH KIRKER,)	
22	MARK DENNISON LANDERS, BRIAN)	
	RICHARD PAINO,)	
23)	
	Plaintiffs,)	TO ALLEGE PUNITIVE DAMAGES
24)	
	v.)	
25	DEFENDANT DOE 1; DEFENDANT DOE)	
26	2; and DOES 3 through 100, inclusive,)	
)	
27	Defendants.)	HEARING DATE: July 12, 2006
)	HEARING TIME: 8:30 a.m.
)	DEPARTMENT: 20
28)	

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1 _____)
2 This Document Relates to Orange County)
3 Superior Court Case No. 02CC06293:)

4 ERIC NATHAN PAINO,)
5 Plaintiff,)

6 v.)

7 THE ROMAN CATHOLIC BISHOP OF)
8 ORANGE; THE ARCHDIOCESE OF)
9 MILWAUKEE; FATHER SIEGFRIED)
10 WIDERA; and DOES 3 through 100, inclusive,)

11 Defendants.)
12 _____)

13 TO ALL PARTIES HEREIN AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

14 NOTICE IS HEREBY GIVEN that on July 12, 2006, at 8:30 a.m., or as soon thereafter as
15 the matter may be heard in Department 20 of the above-referenced Court, located at 111 North Hill
16 Street, Los Angeles, California, Plaintiffs will move this court for an order granting permission to
17 allege punitive damages against the Archdiocese of Milwaukee.

18 This motion is made on the ground that Defendant in this case is against a religious entity,
19 and pursuant to Code of Civil Procedure section 425.14, Plaintiff must obtain permission from this
20 Court to allege punitive damages. There is sufficient evidence in this case to permit Plaintiffs' claim
21 for punitive damages to go to a jury and, therefore, the Court should permit Plaintiffs to allege such
22 punitive damages pursuant to Code of Civil Procedure section 425.14.

23 This motion is based on the notice of motion and motion, the attached memorandum of
24 points and authorities, the declaration of J. Owen Campbell and attached exhibits, the pleadings and
25 other documents on file herein, and on such evidence as may be presented at the hearing of the motion.

26 DATE: June 19, 2006

LAW OFFICES OF FREBERG & ASSOCIATES

27 By: 

J. Owen Campbell
Attorneys for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Introduction.**

3 Plaintiffs seek permission of this Court to allege punitive damages against the Archdiocese of
4 Milwaukee pursuant to section 425.14 of the Code of Civil Procedure. As discussed below, the facts
5 in the case show there is sufficient evidence to permit the claim for punitive damages to go to a jury
6 because the Archdiocese is guilty of oppression, fraud, and malice, and the Archdiocese acted in
7 conscious disregard for the rights and safety of others.¹

8 **II. Examples of Notice to the Archdiocese of Milwaukee that Father Widera Sexually Abused
Boys.**

9 **A. Father Widera Is Convicted of Oral Sex with a Boy.**

10 On July 2, 1973, the Ozaukee County District Attorney filed a criminal complaint against Fr.
11 Widera: “Frank Siegfried Widera did feloniously commit an act of sexual gratification involving the
12 sex organ of Frank Siegfried Widera and the mouth of [minor boy].” See Declaration of J. Owen
13 Campbell Exhibit (“Ex.”) B.² Before the month ended, Archbishop Cousins ordered Fr. Widera
14 transferred from his parish. See Ex. E, AOM-FIS 07887 (“telephone per Archbishop - that S. Widera
15 need to be transferred immediately”). On August 13, 1973, Fr. Widera pled guilty to the charge, and
16 was sentenced to three years probation, through August 13, 1976. See Ex. F.

17 **B. The Archbishop and Members of the Priest Personnel Board of Milwaukee Know of
18 the Conviction.**

19 Both the Archbishop himself and the Priest Personnel Board for the Archdiocese of Milwaukee³

20
21 ¹ Many of the operative facts in this case -- the names of the particular people in the Archdiocese
22 who knew that Father Widera was a pedophile, when the Archdiocese came to learn that Father
23 Widera was molesting, and about how the Archdiocese sent Father Widera to California after more
allegations of molestation surfaced -- have also been discussed and summarized by the California
Court of Appeal. See Archdiocese of Milwaukee v. Superior Court, 112 Cal. App. 4th 423 (2003).

24 ² Fr. Widera could have been charged with much more, and it is unclear why he was not. See Ex.
25 C, Investigation Report page 2 (“... he did admit that he had played with a number of boys privates
26 and that he had allowed at least two or three boys to commit an act of sodomy on him.”). Also,
27 in a 2002 investigation, the police interviewed one of the officers who had obtained Widera’s
confession in 1973, who said, “He [Widera] would have the boys drop their pants and urinate into
his mouth . . . He felt that these acts of molesting young boys were normal and natural.” See Ex.
D, Incident Report 00284.

28 ³ The primary purpose of the Priest Personnel Board was to make recommendations to the
Archbishop for the placement of diocesan priests. See Ex. G, Hornacek Depo. 6:3-11.

1 knew about the criminal conviction. For example, an August 14, 1973 Archdiocese document states:

2 Communication from Archbishop Cousins to J. Theisen, Exec. Sec. of Priests' Personnel
3 Board . . . Father Widera was arrested for, as the Milwaukee Sentinel stated it, sexual
4 perversion with young boys. He appeared in the Ozaukee County Court yesterday, August
5 13, 1973 and was sentenced to 3 years probation. The Judge, who imposed the sentence, also
6 ordered that Father Widera may not return to the Port Washington area. Father Widera is
7 presently seeing Dr. Leo Graham twice per week.

8 See Ex. H, AOM 0177. Fr. John Theisen, then Executive Secretary of the Priest Personnel Board,
9 testified that he knew as early as 1973 that Fr. Widera was a pedophile, and that he had been criminally
10 convicted of child molestation. See Ex. I, Theisen Depo.18:16-20:17, 26:8-27:9.

11 **C. The Archdiocese Questions Father Widera's Pastor and Learns Father Widera May**
12 **Have Molested Other Young Boys.**

13 Other Archdiocesan records show that the Archdiocese had knowledge the molestation Fr. Widera
14 was convicted of was not an isolated incident. For example, Fr. Rolland Glass was the pastor at St.
15 Mary in Port Washington where Fr. Widera had served from 1972 through 1973. In an interview of
16 Fr. Glass by the Archdiocese on September 3, 1973, Fr. Glass told the Archdiocese the following about
17 Fr. Widera:

18 2. . . [Fr. Widera] had instant rapport with young boys and spent a lot of time with them....

19 7. A male grade school teacher saw Fr. Widera fooling around with the boys of another
20 teacher. He said to father that if he fooled around in the same way with his students, he
21 would punch Father in the face.

22 8. *Fr. Glass had reports for some time from within and without the parish that something*
23 *was wrong.*

24 9. He coached the boys in basketball. *He would be in the shower with the boys – all in the*
25 *nude. When an adult male entered the shower, Fr. Siegfried covered himself with a towel.*

26 10. Fr. Siegfried took boys swimming at a motel in Milwaukee. Father knew the owner and
27 could use the pool. This happened over a period of time.

28 11. Parishioners came forward after the fact and indicated incidents they had noticed and warnings
they had given their own children about not letting Father touch them.

Fr. Glass' mother told Glass that *Fr. Siegfried on at least one occasion had a boy sleep with*
him overnight in the rectory.

13. *Fr. Glass did confront Fr. Siegfried: "Circumstances are forcing me to draw certain*
conclusions about you and your conduct with little boys." Fr. Siegfried stopped seeing boys for
a time but then went back to it.

14. There was a pattern of contact with small boys.

See Ex. J, AOM 0178 (emphasis added).

1 **D. After the Conviction, the Archdiocese of Milwaukee Transfers Father Widera To**
2 **Another Parish.**

3 Despite its knowledge that Fr. Widera was criminally convicted of moral perversion with boys,
4 and despite its knowledge that in all likelihood, Fr. Widera had molested other Catholic boys, the
5 Archdiocese of Milwaukee immediately started to look for another church for Fr. Widera to work.
6 Less than one month after the criminal conviction, and three days after Fr. Glass provided the
7 extremely disturbing information about Fr. Widera, the Archdiocese transferred Fr. Widera to St.
8 Andrew parish in Delavan, Wisconsin. See Ex. E, AOM-FIS 08758 (“9/6/73: telephone per J.
9 Waldbauer – that S. Widera will be helping out at St. Andrew, Delavan”).

10 **E. The Archdiocese Misrepresents that Father Widera is Safe with Children.**

11 Within a mere six months after Fr. Widera was convicted for oral sex with a boy, and during the
12 time that he was still on probation, unsuspecting people associated with St. Andrew began writing to
13 the Archdiocese to say how wonderful Fr. Widera was with the children. For example:

14 On February 12, 1974, the vice-president of the St. Andrew school board wrote to Fr. Theisen,
15 “I am writing to tell you how pleased we are to have Fr. Sig Widera here in St. Andrew’s parish. He
16 has endeared himself to all who have had contact with him. *The children in our school literally follow*
17 *him around; he is so kind and shows so much interest in them.*” See Ex. I, AOM 0179 (emphasis
18 added), Theisen Depo. 29:3-31:18. Fr. Theisen responded to this letter, “We are most happy to hear
19 that you are so pleased with Father Sig Widera. *We are happy to hear that he is doing well in the*
20 *school and shows so much interest in the children.*” See Ex. I, AOM 0180 (emphasis added), Theisen
21 Depo. 29:3-31:18. Knowing Fr. Widera recently had been convicted of oral sex with a young boy, the
22 Archdiocese encouraged parishioners to let their children spend time with Fr. Widera.

23 On February 20, 1974, Agnes M. from St. Andrew wrote Fr. Theisen and the Priest Personnel
24 Board, thanking them for sending Fr. Widera to St. Andrew: “[Fr. Widera] is so well liked we hope
25 we can keep him permanently. *He is so good with the school children.*” See Ex. I, AOM 0181
26 (emphasis added), Theisen Depo. 34:11-35:21. On February 25, 1974, Fr. Theisen wrote back, “Your
27 kind words concerning Father Widera are most appreciated and will be brought to the attention of the
28 entire Personnel Board at our next meeting.” See Ex. I, AOM 0182, Theisen Depo. 34:11-35:21.

1 On March 2, 1974, Joan O. from St. Andrew wrote to Fr. Theisen, "I want to tell you how much
2 we enjoy having Fr. Sigfried Widera with us. . . I am the mother of 4 teenagers *He is wonderful*
3 *with the young children*" See Ex. I, AOM 0185-86 (emphasis added), Theisen Depo. 41:18-43:5.
4 Fr. Theisen wrote back, "The Archdiocesan Priests' Personnel Board . . . certainly do appreciate the
5 very kind words you have to say about Father Sigfried Widera. The entire Board is most happy that
6 Father Widera is doing so well at St. Andrew parish. . . ." ⁴ See Ex. I, AOM 0187, Theisen Depo.
7 41:18-43:5.

8 Fr. Theisen admitted that it was the Board's practice to show to Archbishop Cousins these
9 complimentary letters about the priests in Milwaukee, and that he knows of no reason why he would
10 have deviated from that practice with these letters about Fr. Widera. See Ex. I, Theisen Depo. 39:21-
11 41:6. But Fr. Theisen does not recall anyone ever warning the parishioners of St. Andrews of Fr.
12 Widera's criminal conviction for oral sex with a boy, even though the Archdiocese of Milwaukee had
13 plenty of information that Fr. Widera was selecting new victims at his new parish. See Ex. I, Theisen
14 Depo. 29:3-31:18, 34:11-35:21, 38:8-39:16, 39:21-41:6, 41:18-43:5. The Archdiocese's act of
15 transferring Fr. Widera to another church position where he would be around kids, its knowledge that
16 in fact Fr. Widera was around kids and setting himself up to molest again, and its failure to remove
17 Fr. Widera were just the beginning of the Archdiocese's cover-up, which eventually led to California.

18 **F. The Archdiocese Of Milwaukee -Learns Fr. Widera Is Again Molesting Boys; The**
19 **Archdiocese of Milwaukee Endeavors to "Keep the Lid on the Thing, So No Police**
20 **Record Would Be Made."**

21 The ombudsman's files from the Archdiocese of Milwaukee show that on June 29, 1976, the
22 Archbishop contacted the ombudsman to say that there had been another allegation made against Fr.
23 Widera:

24 Archbishop called – Mike Short, a therapist in Elkhorn, had called in to Bob Sampon - Short
25 is a counselor and now advocate for [mother of minor boy]. *She reported to Short that her*
26 *son had been sexually molested by Fr. Widera while on a weekend fishing outing - Son is*
27 *[minor boy] age 13, an altar boy at parish. Archbishop suggested I call Widera first, then*

28 ⁴ The Archdiocese received other letters from parishioners praising Fr. Widera for his work with
the children in the parish. See Ex. I, AOM 0184, Theisen Depo. 39:21-41:6 (February 28, 1974
letter from parishioner Clara G., "The children are very happy with [Widera]"); Ex. I, AOM 0183,
Theisen Depo. 38:8-39:16 (February 28, 1974 letter from parishioner Pat R., "the children are so
happy with [Widera]. . .the children adore him.").

1 Short, assuring complainants that W. will be removed from parish and will receive in-patient
2 treatment, if necessary.

3 See Ex. K, AOM-FIS 08754. The notes reflect that two days later, on July 1, the ombudsman met with
4 Fr. Widera, and Widera “admitted that he made ‘a slip.’” Id. The ombudsman for the Archdiocese
5 of Milwaukee told Fr. Widera that he would “*try to keep the lid on the thing, so no police record would*
6 *be made,*” but that Fr. Widera probably would be transferred and would need in-patient treatment. Id.
7 (emphasis added).

8 The ombudsman then contacted Mike Short, the counselor, and the ombudsman agreed that Short,
9 “will contact [mother of minor boy] and convince her not to act with police, if Church removes W.
10 from parish, and gets him help, as well as counsels the boy.” Id. On July 8, the ombudsman talked
11 to Fr. Widera, and told him, “anticipate moving from Delavan after probation is over,” “[do] not to tell
12 Fr. Henke [pastor of St. Andrew] at this time,” “stay away from [minor boy],” “also stay away from
13 another boy seen with frequently.” Id. at AOM-FIS 08756. The ombudsman understood Fr. Widera
14 was a threat to other minor boys as well.

15 A month and a half later, on August 20, 1976, even though there was a concerted effort by the
16 Archdiocese to keep information away from Fr. Henke that Fr. Widera was molesting boys again, Fr.
17 Henke reported more allegations to the Priest Personnel Board. Notes from the Priest Personnel Board
18 state, “8/20/76 - telephone - E. Henke - informed that S. Widera had had an incident with an 11 year
19 old boy a couple of months ago. Henke is concerned that the talk may become vicious against him in
20 such a small town because news travels fast.” See Ex. E, AOM-FIS 08759.

21 The Archdiocese and police records also reflect yet another report of molestation by Fr. Widera
22 in the summer of 1976. A priest in the Archdiocese of Milwaukee, Fr. V., told the police that in the
23 summer of 1976, two ladies rushed into the rectory at Fr. Widera’s church after morning mass. See
24 Ex. L, West Allis police report 00310. The two women were very upset and crying. Id. The women
25 told Fr. V. they had attended morning mass, and had witnessed Fr. Widera performing a sex act in the
26 Sacristy with two boys. Id. Fr. V. then immediately called the priest personnel board or the chancery
27 (Archdiocese headquarters) to directly report what had happened. Id.
28

1 **III. The Archdiocese Sends Father Widera to the Diocese of Orange.**

2 **A. Father Widera Goes “On Vacation.”**

3 On August 20, 1976, the day of the report by Fr. Henke that “S. Widera had had an incident with
4 an 11 year old boy,” the Archdiocese set in motion its plan to get Fr. Widera out of Wisconsin. The
5 ombudsman wrote in his notes, “called Henke and Widera - they agreed that W. would go ‘on
6 vacation’ (California!) Then [Fr. Widera] would be transferred. W. should tell people only that
7 he’s going on vacation.” See Ex. K, AOM-FIS 08757. On August 23, 1976, the ombudsman told
8 Archbishop Cousins about these “developments.” Id.

9 On September 27, 1976, the ombudsman wrote: “Approached Esser about above – the Personnel
10 Board has heard nothing from anyone - Archbishop has not spoken to Personnel Board about this
11 matter. – However, Paul [Esser] would have a problem in conscience to re-assign Siegfried - when?
12 And should they really - in view of Widera’s record???” Id.

13 **B. The Archbishop of Milwaukee Arranges for Father Widera to Work for the Diocese**
14 **of Orange, and Misrepresents That Widera Is Not a Risk.**

15 On December 3, 1976, the Archbishop contacted the Board to inform it of his plan: “S. Widera -
16 will spend some time with his parents in Florida and then go to California to continue psychotherapy
17 with the contact of Leo Graham; *the Archbishop plans to contact Bishop Johnson of Orange to see if*
18 *there might be something available for Widera.” See Ex. E, AOM-FIS 08759 (emphasis added). On*
19 December 17, 1976, the Archbishop told the Board that he had “called Bishop [William] Johnson in
20 Orange about possibility for S. Widera.” Id.

21 On December 20, 1976, the Archbishop sent a letter to Bishop Johnson and Fr. Michael Driscoll,⁵
22 requesting that the Diocese of Orange give Fr. Widera an assignment:

23 A few days ago I talked by phone to Bishop Johnson about a possible pastoral assignment
24 for Father Siegfried Widera of this Archdiocese. The conversation was very general and the
25 Bishop suggested that perhaps something could be done on a temporary basis. My reason
26 for approaching Bishop Johnson is founded in the fact that Father Widera’s brother and
27 family live in Costa Mesa, California.

28 Father Widera was ordained in 1967 and has done good work for the Diocese in the places
to which he was assigned. In his earlier years there was a moral problem having to do with

⁵ Michael Driscoll is now the bishop of Boise. From June of 1976 through 1980, he was the secretary to the Bishop of Orange. See Ex. M, Driscoll Depo. 20:11-22. From June of 1976 through 1987, Driscoll also served as chancellor of the Diocese of Orange. Id.

1 a boy in school. This seemed adequately confronted through treatment and an intense desire
2 upon Father's part to avoid any repetition of a previous offense.

3 More recently, however, there has been a repetition, and according to our State Laws further
4 psychiatric treatment is mandated with the strong recommendation that no immediate
5 assignment be made in the environs of the Archdiocese.

6 Father Widera has cooperated in every way and is presently under treatment. His doctor is
7 somewhat in favor of his leaving the scene but expects that there will be continuing
8 treatment. *This has already been arranged and a doctor in California will take over at this
9 point.* From all the professional information I can gather *there would seem no great risk in
10 allowing this man to return to pastoral work, but there are legal complications at present
11 writing. Incidentally, these legal technicalities would permit Father's going to another State
12 as long as treatment is continued. . . .*

13 There is no thought of incardination involved, and *I am quite willing to accept the man back
14 into the Archdiocese whenever circumstances would indicate.* Though I anticipate no
15 recurrence of this past aberration, I would certainly want to be informed if the slightest
16 suspicion were to develop.

17 See Ex. N, AOM 0024-25 (emphasis added).

18 Even though Archbishop Cousins arranged to have Fr. Widera work in California, he did not
19 disclose in this letter the fact that Fr. Widera had pled guilty and had been criminally convicted for
20 having a boy orally copulate him. Archbishop Cousins did not disclose in this letter that at the time
21 of the criminal conviction in 1973, the Archdiocese actually had information that Fr. Widera was
22 molesting multiple boys. The Archbishop did not disclose in his letter what the "repetition" acts by
23 Fr. Widera were, and did not discuss the fact the the "repetition" acts involved multiple boys.

24 Most importantly, Archbishop Cousins lied when he said: "From all the professional information
25 I can gather there would seem no great risk in allowing this man to return to pastoral work." In fact,
26 the Archdiocese of Milwaukee's consulting psychologist made it clear to the Archdiocese that
27 treatment was unlikely to help Widera. The Ombudsman for the Archdiocese of Milwaukee discussed
28 treatment for Fr. Widera with Dr. Leo Graham – the Archdiocese's consulting psychologist – on July
7, 1976, and noted, "Graham feels that if Fr. Widera must be sent to hospitalization, it must be within
State . . . Leo doubts value of in-patient treatment however." See Ex. K, AOM-FIS 08755.

29 **C. The Archdiocese of Milwaukee Secures Father Widera an Assignment in Orange**
30 **Within A Matter of Months of His Being Caught Molesting (Again) in Wisconsin.**

31 On January 11, 1977, the ombudsman from the Archdiocese of Milwaukee traveled to California
32 and met with Fr. Widera. In that meeting, the ombudsman confirmed that Fr. Widera would work as
33 a priest in the Diocese of Orange. See Ex. K, AOM -FIS 08757 ("1/11/77 Met Widera for lunch in

1 L.A. He will work in Orange diocese”). On January 10, 1977, Fr. Driscoll sent a copy of a letter to
2 Milwaukee to confirm that Fr. Widera was appointed to St. Pius V in Orange County. See Ex. O,
3 AOM 0026. On January 17, 1977, Fr. Driscoll sent a letter to Archbishop Cousins thanking the
4 Archdiocese for the “introduction to Reverend Siegfried Widera of the Archdiocese of Milwaukee.”
5 See Ex. P, AOM 0027.

6 On January 20, 1977, the Archbishop informed the Priest Board that Fr. Widera had faculties and
7 residence at St. Pius V. in California. See Ex. E, AOM-FIS 08759. Thus, a mere five months after
8 being caught molesting in Wisconsin, the Archdiocese of Milwaukee saw to it once again that Fr.
9 Widera was back in his position as a Roman Catholic parish priest.⁶

10 On January 25, 1977, Archbishop Cousins sent a letter to Bishop Johnson in Orange:

11 Permit me to express my sincere thanks to you and those involved for this consideration of
12 a priest who has done good work and whose absence from the Diocese is predicated upon
13 the local situation discussed in earlier letters. I fully expect that upon the recommendation
14 of those professionally helping him at the present time he will be reassigned in our
15 Archdiocese.

16 See Ex. Q, AOM 0028. By pretending that Widera was in therapy and that the Archdiocese of
17 Milwaukee would take him back, the Archbishop continued to misrepresent the danger to boys posed
18 by Fr. Widera.

19 Just as the Archdiocese well knew would happen, Fr. Widera went on to repeatedly and severely
20 molest numerous innocent Catholic boys in the state of California, some as young as 8 years old. Fr.
21 Widera repeatedly molested Plaintiff Max Fisher in the year 1978, when Max was only approximately
22 13 or 14 years old. See Declaration of Max Fisher ¶¶ 3-5.

23 Fr. Widera also sexually abused: Plaintiff David Guerrero beginning in about 1977, when David
24 was approximately 9 or 10 years old; Plaintiff Mark Landers beginning in about 1978, when Mark was
25 approximately 11 or 12 years old; Plaintiff Chris Huicochea in about 1980, when Chris was
26 approximately 10 or 11 years old; Plaintiff John Kirker in about 1981, when John was approximately
27 9 or 10 years old; Plaintiff Brian Paino in about 1985, when Brian was approximately 9 or 10 years
28 old; Plaintiff Eric Paino beginning in about 1985, when Eric was 8 years old; Plaintiff John

⁶ Bishop Driscoll testified that he would not have recommended allowing Fr. Widera to work in the Diocese of Orange had he known of Fr. Widera’s conviction and that Widera was not safe around children. See Ex. M, Driscoll Depo. 76:10-78:3.

1 Habermann in California during the time Fr. Widera was being transferred to Orange County in 1976.
2 See Fisher et al. Complaint ¶¶ 8-8.13; Eric Paino First Amended Complaint ¶ 17.

3 Had Archbishop Cousins spoken the truth, Fr. Widera never would have been transferred to work
4 in parishes in Orange County.⁷ If Fr. Widera had not been transferred to California, he would not have
5 had the opportunity to sexually abuse Plaintiffs in California.

6 **IV. The Archdiocese of Milwaukee Had Jurisdiction, Control, and Authority over Father**
7 **Widera When He Was in California.**

8 In addition to the Archdiocese making misrepresentations to the Diocese of Orange regarding Fr.
9 Widera's fitness as a priest, the Archdiocese had jurisdiction and control over Fr. Widera while he was
10 in California. The Archdiocese had the authority and ability to prevent Fr. Widera from abusing any
11 more boys as a priest, but consciously disregarded the threat Widera posed and allowed him to
12 continue in ministry, and is therefore liable.

13 **A. Control over Father Widera.**

14 The Priest Personnel Board members, the Vicar for Clergy, and the Chancellor for the
15 Archdiocese of Milwaukee all testified that when Fr. Widera was in California acting as a priest, but
16 still incardinated into the Archdiocese of Milwaukee, the Archdiocese had jurisdiction, control, and
17 authority over Fr. Widera. See Ex. R, Sampon⁸ Depo. 23:25-24:5, 24:19-25:8, 38:16-40:18; Ex. G,
18 Hornacek Depo. 23:15-24:2; Ex. S, Sklba Depo. 36:9-37:13.

19 Fr. Widera still had to answer to the Archdiocese regardless of the fact that Widera was in
20 California. See Ex. R, Sampon Depo. 40:9-14. In fact, the Archdiocese had the same authority over
21 Fr. Widera in California it would have had over him in Milwaukee. See Ex. I, Theisen Depo. 76:20-
22 25, 77:1-9. As Bishop Driscoll testified, Milwaukee had authority over Fr. Widera in California
23 because "*He was still their priest.*" See Ex. M, Driscoll Depo. 119:12-16. During the time that Fr.
24 Widera was incardinated into the Archdiocese of Milwaukee, but working as a priest in California, the
25 Archdiocese had the authority and control over Fr. Widera to do any of the following:

26 ⁷ Bishop Driscoll testified that he would not have recommended allowing Fr. Widera to work in
27 the Diocese of Orange had he known of Fr. Widera's conviction and that Widera was not safe
around children. See Ex. M, Driscoll Depo. 76:10-78:3.

28 ⁸ Fr. Robert Sampon was the Chancellor for the Archdiocese of Milwaukee in 1977. See Ex. R,
Sampon Depo. 10:9-12.

1 1. To order Fr. Widera back to Wisconsin. See Ex. G, Hornacek Depo. 24:4-6; Ex. S, Sklba
2 Depo. 37:14- 23; Ex. R, Sampon Depo. 41:10-42:21; Ex. T, Janicki Depo. 40:18-41:3; Ex. I, Theisen
3 Depo. 77:7-9; Ex. M, Driscoll Depo. 119:17-23.

4 2. To order Fr. Widera to leave the Diocese of Orange and the State of California. See Ex. G,
5 Hornacek Depo. 24:7-9; Ex. T, Janicki Depo. 41:4-5; Ex. I, Theisen Depo. 77:10-15.

6 3. To petition the Pope to laicize Fr. Widera. See Ex. T, Janicki Depo. 41:12-17.

7 4. To tell the Diocese of Orange not to place Widera in a position where he would be around
8 children. See Ex. G, Hornacek Depo. 26:4-18. But the Archdiocese never made this request. See Ex.
9 M, Driscoll Depo. 115:14-18.

10 5. To supervise Fr. Widera in California. See Ex. I, Theisen Depo. 82: 6-12.

11 6. To investigate whether Fr. Widera was molesting children while Fr. Widera was acting as
12 a priest in California. See Ex. R, Sampon Depo. 43:20-25; Ex. T, Janicki Depo. 41:22-24; Ex. I,
13 Theisen Depo. 79:18-21.

14 7. To order Fr. Widera to take a lie detector test to see if he was molesting kids in California.
15 See Ex. T, Janicki Depo. 42:16-20.

16 8. To requests reports from the Diocese of Orange on Fr. Widera. See Ex. R, Sampon Depo.
17 44:2- 10; Ex. T, Janicki Depo. 41:25-42:2; Ex. I, Theisen Depo. 79:22-24.

18 9. To question Fr. Widera to determine if he was molesting kids in California. See Ex. R,
19 Sampon Depo. 43:2-19; Ex. T, Janicki Depo. 41:18-21; Ex. I, Theisen Depo. 77:23-78:1.

20 10. To order Fr. Widera to get counseling in California. See Ex. R, Sampon Depo. 45:21-46:2;
21 Ex. T, Janicki Depo. 42:7-14; Ex. M, Driscoll Depo. 121:16-18. In fact, it would be expected in this
22 situation that the Archdiocese of Milwaukee would cooperate in getting counseling for Fr. Widera in
23 California. See Ex. T, Janicki Depo. 24:8-14, 49:17-24.

24 **B. The Archdiocese of Milwaukee Continued to Provide Benefits to Father Widera When**
25 **He Was Acting as a Priest in California.**

26 The Archdiocese of Milwaukee provided benefits to Fr. Widera when he was acting as a priest
27 in California and while he was incardinated in Milwaukee. For example:

28 1. The Archdiocese paid for Fr. Widera's health care through his health insurance. See Ex.
R, Sampon Depo. 9:14-12:23, 52:15-53:15; Ex. P, AOM 0027.

1 2. Fr. Widera remained on Milwaukee's Priest Pension Fund. See Ex. R, Sampon Depo.
2 12:24-13:5; 54:1-14.

3 3. Fr. Widera was entitled to get benefits from the Archdiocese of Milwaukee St. Michael's
4 Priest Fund. See Ex. R, Sampon Depo. 13:6-14:6, 23:14-22.

5 4. Fr. Widera was allowed to remain as a member of the Priest Senate. See Ex. R, Sampon
6 Depo. 32:1-25, 33:19-34:11.

7 **C. The Archdiocese Never Insured That Father Widera Was Not Molesting Children In**
8 **California and It Never Warned Any Priests or Nuns Father Widera Was Working**
With, Or Parishioners Father Widera Would be Associating With, In California.

9 In addition to not warning the Diocese of Orange about Fr. Widera, the Archdiocese of Milwaukee
10 admitted that no one ever warned the priests and nuns working with Fr. Widera about his history of
11 molesting boys to ensure that he was not still molesting in California, and admitted that no one was
12 even supervising Fr. Widera.⁹ See Ex. G, Hornacek Depo. 28:16-29:3; Ex. S, Sklba Depo 42:10-15;
13 Ex. R, Sampon Depo. 46:8-13, 48:13-49:12; Ex. T, Janicki Depo. 42:25, 43:1-9, 43:18-25; Ex. I,
14 Theisen Depo. 81:22-82:5; Ex. M, Driscoll Depo. 114:25-115:13. Once again, the failure to warn both
15 those people who would have a daily contact with Fr. Widera, and failure to warn the children at risk,
16 was part of the pattern of cover-up.

17 **V. Plaintiffs Must Be Permitted to Allege a Claim for Punitive Damages Against the**
Archdiocese of Milwaukee.

18 **A. Plaintiffs Must Be Allowed to Plead a Claim for Punitive Damages Against a Religious**
19 **Corporation Where Plaintiffs Can Establish a Prima Facie Case for Punitive**
20 **Damages.**

21 Code of Civil Procedure section 425.14 provides that no claim for punitive or exemplary damages
22 may be pled unless permitted by court order after the plaintiff brings a motion to amend the complaint.
23 Section 425.14 requires only that a plaintiff demonstrate the existence of sufficient evidence to
24 establish a prima facie case¹⁰ for punitive damages, enough to sustain a favorable decision if the

25 ⁹ It is interesting to note that it was not until the year 1993 that the Archdiocese of Milwaukee
26 decided that it had better check on Fr. Widera. On December 17, 1993, Bishop Sklba from the
27 Archdiocese of Milwaukee called California to the Diocese of Orange to "try to figure out who's
responsible for [Fr. Widera]." See Ex. S, Sklba Depo. 17:6-18:2.

28 ¹⁰ "[A] prima facie showing is one that is sufficient to support the position of the party in
question. [Citation.] No more is called for." Aquilar v. Atlantic Richfield Co., 25 Cal. 4th 826,
851 (2001).

1 evidence submitted be credited under the clear and convincing standard. Rowe v. Superior Court, 15
2 Cal. App. 4th 1711, 1722 (1993). In considering the evidence, the trial court “is not required to make
3 any factual determination or to become involved in any weighing process beyond that necessarily
4 involved in determining whether a prima facie case for punitive damages exists.” Id. Once the court
5 concludes that such a case can be presented at trial, it must permit the proposed amended pleading to
6 be filed. Id. In making this judgment, the court’s consideration of the defendant’s opposing affidavits
7 *does not permit a weighing of them against the plaintiff’s supporting evidence*, but only determination
8 that they do not, as a matter of law, defeat that evidence. Id. Moreover, a party should be free to
9 renew a properly denied motion on subsequent, timely discovery of additional evidence. Id. at 1735.
10 In other words, section 425.14 is to protect religious organizations from the expense of defending
11 against punitive damage claims for which a plaintiff can show *no* likelihood of success. Id. at 1722.

12 **B. Plaintiffs Can Recover Punitive Damages Against a Defendant for the Wrongful Acts**
13 **of That Defendant.**

14 **1. Plaintiffs Can Recover Punitive Damages Against a Defendant Who Is Guilty**
15 **of Oppression, Fraud or Malice.**

16 Pursuant to Civil Code section 3294(a), a plaintiff may recover punitive damages against a
17 defendant who has been guilty of oppression, fraud, or malice. Civil Code § 3294(a). The words
18 oppression, fraud, and malice as used in Civil Code section 3294(a) are disjunctive, and proof of any
19 of them will support an award of punitive damages. Oakes v. McCarthy Co., 267 Cal. App. 2d 231,
20 262-63 (1968); see also Stevens v. Superior Court, 180 Cal. App. 3d 605, 627 (1986) (a properly
21 pleaded fraud claim will itself support recovery of punitive damages; no allegations of malice or intent
22 to injure are required, because fraud is an alternative basis for recovery).

23 “Malice” means “despicable conduct¹¹ which is carried on by the defendant with a willful and
24 conscious disregard¹² of the rights or safety of others.” Civil Code § 3294(c)(1). “Oppression” means

25 ¹¹ Despicable conduct is conduct that is so vile, base, contemptible, miserable, wretched, or
26 loathsome that it would be looked down on and despised by ordinary decent people. BAJI
14.72.1.

27 ¹² Conscious disregard is shown when plaintiff demonstrates that the defendant was aware of the
28 probable dangerous consequences of the conduct, and willfully and deliberately failed to avoid
those consequences. Hasson v. Ford Motor Co., 32 Cal. 3d 388, 402 (1982); Taylor v. Superior
Court, 24 Cal. 3d 890, 895-96 (1979). As stated by the California Supreme Court:
“Nonintentional conduct comes within the definition of malicious acts punishable by the

1 “despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that
2 person’s rights.” Civil Code § 3294(c)(2). Thus, a plaintiff need not prove that the defendant intended
3 to injure the plaintiff. Instead, a defendant can be liable for punitive damages for the conscious
4 disregard of the safety of others.¹³

5 For example, in O’Hara v. W. Seven Trees Corp. Intercoast Mgmt., 75 Cal. App. 3d 798 (1977),
6 a management corporation knew about repeated rapes occurring on its property. Despite this
7 knowledge, the management company claimed its property was safe in order to rent its apartments.
8 Plaintiff was raped by the same serial rapist. The court held that this sufficiently alleged conscious
9 disregard of plaintiff’s safety, and that alleging punitive damages was proper. Id. at 806.

10 **2. Plaintiffs Can Recover Punitive Damages Against an Employer for the Acts of**
11 **its Employee.**

12 In addition to allowing punitive damages against a defendant based on direct liability, California
13 also allows a plaintiff to recover punitive damages against an employer for the acts of an employee.
14 Civil Code § 3294(b). Section 3294(b) provides that an employer shall not be liable for punitive
15 damages based on the acts of its employee, “unless the employer had advance knowledge of the
16 unfitness of the employee and employed him or her with a conscious disregard of the rights or safety
17 of others or authorized or ratified the wrongful conduct for which the damages are awarded . . .”¹⁴
18 Thus, “If the employer after knowledge or opportunity to learn of the agent’s misconduct retains the
19 wrongdoer in service, the employer may make himself liable in punitive damages.” Coats v.
20 Construction & General Laborers Local No. 185, 15 Cal. App. 3d 908, 914 (1971).

21 _____
22 assessment of punitive damages when a party intentionally performs an act from which he knows,
23 or should know, it is highly probable that harm will result.” Peterson v. Superior Court, 31 Cal.
24 3d 147, 158-59 (1982).

25 ¹³ Evidence indicating that the defendant was aware of the probable consequences of his or her
26 acts and willfully and deliberately failed to avoid those consequences is sufficient to establish
27 conscious disregard of plaintiff’s rights. J.R. Norton Co. v. General Teamsters, Warehousemen
28 & Helpers Union, Local 890, 208 Cal. App. 3d 430, 444-45 (1989).

¹⁴ With respect to a corporate employer, the advance knowledge and conscious disregard,
authorization, [or] ratification . . . must be on the part of an officer, director, or managing agent
of the corporation.” Cal. Civ. Code § 3294(b). For purposes of punitive damages liability under
this section, a “managing agent” of a corporation is someone “who exercises substantial
discretionary authority over decisions that ultimately determine corporate policy.” White v.
Ultramar, Inc., 21 Cal. 4th 563, 573 (1999).

1 According to Weeks v. Baker & McKenzie, 63 Cal. App. 4th 1128, 1151 (1998):

2 Subdivision (b) [of Civil Code § 3294] authorizes the imposition of punitive damages on an
3 employer in three situations: (1) when an employee was guilty of oppression, fraud or malice,
4 and the employer with advance knowledge of the unfitness of the employee employed him
5 or her with a conscious disregard of the rights and safety of other, (2) when an employee was
6 guilty of oppression, fraud or malice, and the employer authorized or ratified the wrongful
7 conduct, or (3) when the employer was itself guilty of the oppression, fraud or malice.

8 **C. Plaintiffs Can Establish a Prima Facie Case for Punitive Damages Against the**
9 **Archdiocese of Milwaukee.**

10 “California has an interest in protecting its children from sexual abuse.” Archdiocese of
11 Milwaukee v. Superior Court, 112 Cal. App. 4th 423, 443 (2003). In this case, the Archdiocese of
12 Milwaukee consciously disregarded the risk it created to Catholic boys, fraudulently concealed its
13 knowledge of Fr. Widera’s sexual abuse, and misrepresented that Fr. Widera was a man who could
14 be trusted with children. In fact, when parishioners sent letters to the Archdiocese of Milwaukee
15 saying that Fr. Widera was great with children, the Archdiocese wrote back saying it was glad to hear
16 it, even though the Archdiocese knew Fr. Widera had been convicted of making a young boy orally
17 copulate him. When more victims came forward, the Archdiocese just moved him again. The
18 Archdiocese knew of Fr. Widera’s unfitness but continued to put him with children, ratified his
19 conduct, and through its amazing fraud and complete disregard for the rights and safety of little boys
20 was itself guilty of malice and oppression. See Weeks, 63 Cal. App. 4th at 1151.

21 The Plaintiffs believe the Archdiocese of Milwaukee will try to argue that it did not really
22 understand the threat to boys posed by Fr. Widera, or that it did not place him in California, or some
23 similar argument. Plaintiffs can and will prove at trial that Archdiocese’s arguments are specious.
24 However, according to Rowe, the trial court is not to make any factual determination or become
25 involved in the process of weighing evidence; as long as the Archdiocese’s evidence does not defeat
26 Plaintiffs’ evidence as a matter of law, Plaintiffs have demonstrated a prima facie case for punitive
27 damages. Rowe, 15 Cal. App. 4th at 722.

28 The Archdiocese of Milwaukee knew that Fr. Widera posed a substantial risk to minor boys. The
Archdiocese of Milwaukee repeatedly put Fr. Widera into further contact with young boys, and acted
in conscious disregard for the rights and safety of minor boys, which resulted in the sexual abuse of
Plaintiffs. The Archdiocese’s actions in covering up the criminal acts of a serial pedophile like Fr.

1 Widera were despicable: decent ordinary people would look down upon and despise the Archdiocese
2 of Milwaukee's contemptible decision to cover up sexual abuse, to allow Fr. Widera to continue to
3 sexually abuse boys, and to purposefully transfer Fr. Widera to the State of California where he went
4 on to molest numerous California boys.

5 All of this direct, actual notice to the Archdiocese of Milwaukee subjects it both to direct liability
6 for punitive damages and liability for punitive damages as an employer. As in O'Hara, the
7 Archdiocese of Milwaukee knew of the danger posed to boys by a Fr. Widera, a serial pedophile.
8 Rather than take any precautions to protect children, the Archdiocese of Milwaukee held Fr. Widera
9 out as a priest who could be trusted with youth. Plaintiffs were sexually abused by this predator after
10 the Archdiocese of Milwaukee had this knowledge. Because of this, the Archdiocese of Milwaukee
11 is liable for punitive damages. See O'Hara, 75 Cal. App. 3d 798.

12 **VI. Conclusion.**

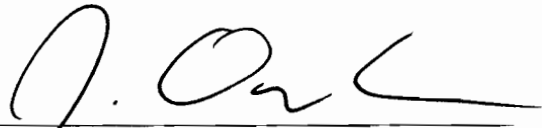
13 All Plaintiffs need do here is to show there is sufficient evidence to permit his claim for punitive
14 damages to go to a jury. These facts are sufficient to show that a reasonable jury could award punitive
15 damages against the Archdiocese of Milwaukee.

16 Plaintiffs respectfully request that this motion to amend the complaint to allege punitive damages
17 be granted. Plaintiffs further request that the proposed First Amended Complaint in the case of Fisher
18 et al. v. Defendant Doe 1, et al. and the proposed Second Amended Complaint in the Case of Eric
19 Paino v. The Roman Catholic Bishop of Orange, et al.¹⁵ be deemed to be the First Amended Complaint
20 and the Second Amended Complaint in those actions and that they be deemed filed and served as of
21 the date of the granting of the motion.

22 DATE: June 19, 2006

LAW OFFICES OF FREBERG & ASSOCIATES

23
24 By:


25 J. Owen Campbell
Attorneys for Plaintiffs

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27
28 ¹⁵ Plaintiffs' proposed First Amended and Second Amended Complaints are attached as Exhibit
A to the Declaration of J. Owen Campbell.

PROOF OF SERVICE

I am employed in the City of Irvine, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is the Law Offices of Freberg & Associates, 8001 Irvine Center Drive, Suite 1070, Irvine, California 92618.

On June 19, 2006, I served the foregoing document described as **PLAINTIFFS' NOTICE OF MOTION AND MOTION FOR PERMISSION OF COURT TO ALLEGE PUNITIVE DAMAGES AGAINST THE ARCHDIOCESE OF MILWAUKEE; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT THEREOF** as follows:

By Mail. The document was served on the parties in this action listed on the attached Mailing List by placing a true copy thereof, enclosed in a sealed envelope, and addressed as indicated on the Mailing List. I deposited such envelope in the mail at Irvine, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with U. S. Postal Service on that same day, with postage thereon fully prepaid, at Irvine, California, in the ordinary course of business.

By Electronic Service. Pursuant to Case Management Order of Judicial Counsel Coordination Proceeding No. 4286, the document was served via CaseHomePage. I forwarded an electronic version (Portable Document Format (pdf) and/or Word Perfect) document file of the text of the moving papers for scanning on June 19, 2006 to CaseHomePage.

By Facsimile. In addition to regular mail, I sent this document via facsimile, to the number(s) as listed on the attached Mailing List.

By Overnight Mail. I arranged for this document to be delivered to the address(es) listed on the attached Mailing List by overnight mail.

By Personal Service. I arranged for this document to be delivered to the address(es) listed on the attached Mailing List by personal service.

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed on June 19, 2006, at Irvine, California.


PATTI DROESCH

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MAILING LIST

**William V. Whelan
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Attorneys for Defendant Doe 1**

PROOF OF SERVICE

I am employed in the City of Irvine, County of Orange, State of California. I am over the age of 18 years and not a party to the within action. My business address is the Law Offices of Freberg & Associates, 8001 Irvine Center Drive, Suite 1070, Irvine, California 92618.

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PATTI DROESCH

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