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IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

ARCHDIOCESE OF ST. LOUIS, *et al.*,	)	
	)	
Relators,	)	
	)	Case No.
vs.	)	
	)	
HONORABLE ROBERT H. DIERKER, JUDGE, CIRCUIT COURT FOR THE CITY OF ST. LOUIS,	)	
	)	**FILED UNDER SEAL**
Respondent.	)	

PETITION FOR WRIT OF PROHIBITION

Relators Archdiocese of St. Louis and Archbishop Robert J. Carlson ("Defendants" or "Archdiocese"), petition for a writ of prohibition to restrain Respondent Judge Robert H. Dierker from requiring the Archdiocese to identify, by name, dozens of accused individuals and victims of sexual abuse of minors, not one of whom is involved in any way in this case. This Court also should restrain Respondent Judge from implementing draconian sanctions for having redacted these third parties' names, including the sanctions of striking Defendants' primary defense in the pleadings; admitting at trial a matrix of two decades of allegations, going back to allegations about conduct in the 1950s, which even the trial court found to be otherwise inadmissible; and forcing Defendants to pay a special master to cold-call all of these dozens of victims to solicit their involvement for Plaintiff's case.

1. This writ arises out of a single personal injury case where one female (who is proceeding under a pseudonym) has accused one former priest, Joseph Ross, of

abusing her more than a decade ago, between 1997 and 2001. The Defendants are accused of intentionally failing to supervise Ross. So in its most basic form, this is a single plaintiff personal injury action, with the clearly serious allegation of the injury being sexual abuse.[1]

2. Plaintiff has not limited her discovery demands to Ross' personnel file and information about other allegations against Ross. Defendants have provided all of this information, and they have even provided privileged communications about Ross. This means, as to the claimed perpetrator and all of his known or alleged victims, Plaintiff and her counsel have <u>all existing information</u>. They do not even dispute they have all the information about Ross and all of Ross' alleged victims, as well as all existing information about Defendants' actions in supervising Ross.

3. Rather, this writ and the trial court's related sanction order stem from the trial court's decision to grant Plaintiff vast discovery far beyond the four years of alleged abuse, and all facts about Ross and any known alleged victim of Ross. Plaintiff served

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[1] Defendants do not concede that Plaintiff was abused by Ross. In fact, the State dropped its criminal prosecution of Ross after Plaintiff was deposed, as she revealed in her deposition that she had mental disturbances, had made false allegations of sexual abuse in the past against others, and in fact <u>wanted to recant</u> her allegations against Ross on "numerous occasions," but was dissuaded from doing so by her lawyers and a political advocacy group, SNAP. *See* Suggestions in Support, Factual and Procedural History § A.

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over 120 separate requests for production of documents, plus a similarly wide-ranging battery of multi-part interrogatories, seeking prior allegations of sexual abuse of a minor by any lay or clerical employee.[2] Far worse than seeking this vast scope of irrelevant information is the fact that Plaintiff's counsel has openly stated in court and written in his filings that once he gets this vast expanse of very private information, he intends to contact every single one of the alleged victims and family members from these six decades, without their permission, and as he alone deems best.

4. Remarkably, the trial court approved this unprecedented campaign to contact dozens of uninvolved individuals who doubtless made intimate disclosures with the expectation of confidentiality. On November 15, 2013, just under two months ago, the Court threatened to strike Defendants' pleadings, in their entirety, if Defendants did not, within 30 days, provide what amounts to two decades of complaints, covering more than six decades of sexual abuse information, about these dozens of third parties.[3]

5. By the deadline, the Defendants provided a very detailed matrix of all of the allegations and communications with victims over this lengthy timeframe. The matrix is pages and pages long and includes information from hundreds of parishes and agencies and affiliates of the Archdiocese for lay and clerical employees. It covers alleged abuse dating back to 1945, and it includes dates, the nature of allegations, unique identifiers for each complainant or accused, the names of persons to whom complaints

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[2] *See* Suggestions in Support, Factual and Procedural History § B.

[3] *See* Suggestions in Support, Factual and Procedural History § C-E.

were made, and a description of the outcome of each communication. Everything the Plaintiff wanted and the Court required, with only one exception. The Respondents simultaneously moved the Court to allow them to redact the names of the accused and the victims—and the matrix redacts those names, replacing them with unique identifiers.[4]

6. The Defendants supported their request to leave these names redacted by submitting affidavits of two doctors, a preeminent psychologist and a preeminent psychiatrist, both of whom have dedicated their practices to treating and helping victims. Both of these doctors attested under oath that contacting these victims out of the blue, after decades since they first communicated with the Archdiocese about their abuse in a private context, would cause them severe emotional injury. It is important to add that in many cases the alleged abuse is brought forward by a family member or friend who may have heard of the abuse second or third hand, or may only suspect there might be abuse—meaning the alleged victim has never come forward or identified himself or herself as a victim. Likewise many of the allegations against the accused are unsubstantiated or

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[4] *See* Suggestions in Support, Factual and Procedural History § F. The tender of information included Ross's personnel and laicization files, otherwise privileged correspondence with the Archbishop (the only privilege on which any of these documents were withheld was attorney-client), a privilege log, and the extensive matrix discussed, plus the Motion to Modify, including four evidentiary affidavits explaining why disclosure of the names would be harmful and improper. *Id.*

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otherwise without factual basis, and the doctors agreed that disclosing names of the accused on a wholesale basis is equally damaging and wrong.[5]

7. This detailed medical testimony was uncontested. Given that all of these incidents and communications are now decades old, that they are often hearsay reports are by third parties, and that many victims have moved on, ordered their lives and families around their healing, and indeed may not have told loved ones about these things from decades ago, it is easy to see that the doctors are right.

8. Despite the uncontroverted medical evidence, and common sense and decency of the Archdiocese's request to leave the names redacted, the trial court not only proceeded to support Plaintiff's plan to involve dozens of third parties in this personal injury case, the trial court entered a crippling sanction order against the Archdiocese for making these redactions.[6]

9. The sanction order is breathtaking on its face and does all sorts of things Plaintiff never even requested. For instance, it provides that:

(a) The Defendants' primary defense in the Answer is stricken, with the trial court entering judgment and ruling that as a matter of law the assignment of Ross to a parish was certain or substantially certain to result in injury to this

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[5] Bearing out the impropriety of the order, one falsely-accused priest moved to intervene to protect his good name from disclosure. *See* Suggestions in Support, Factual and Procedural History § G.

[6] *See* Suggestions in Support, Factual and Procedural History § H.

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Plaintiff. This is not based on any evidence and is contrary to the facts, but is being imposed purely as a sanction.

(b) Defendants must provide dozens of names of victims, who have privately communicated with their Church, and Defendants must pay a special master to contact each and every victim for Plaintiff, <u>at Plaintiff's counsel's direction of the special master</u>, and the special master is to have *ex parte* communications with the Plaintiff's counsel as this massive invasion into these people's lives unfolds. So now the trial court has ordered the six-decade audit, which threatens the destruction of people's lives, at Defendants' cost to develop the Plaintiff's case (and for what is almost certainly the real purpose: other hoped-for cases).

(c) The matrix that Defendants provided the trial court for discovery purposes and to demonstrate their good faith to avoid a drastic threatened sanction, is admitted at trial without foundation. Notably, the Respondent Judge, who is not the trial judge, had admitted into evidence a trial exhibit that is admittedly inadmissible. Respondent has now acknowledged that his prior order resulting in this matrix was overly broad and the document contains irrelevant and inadmissible information. Yet in the very same order, Respondent summarily admits the document in its entirety, containing the irrelevant and inadmissible information, as a sanction for redacting the victims' names. Admitting this document also contradicts the striking of Defendants' primary defense, meaning the real effect is to prejudice the jury with information that Respondent found

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would wrongly result in dozens of mini-trials and would clearly be inadmissible in any other case—yet it is now admitted as a matter of law.

(d) Attorneys' fees are awarded, on top of these other sanctions.

10. The Respondent Judge's refusal to respect the privacy of dozens of uninvolved and unrelated third parties, and the accompanying sanction order, is pure error and a clear abuse of discretion, exceeds his jurisdiction, and works immediate and irreparable harm on these third parties and Defendants. Specifically:

(a) The trial court abused its discretion by sanctioning the Archdiocese for repeatedly succeeding in narrowing its overbroad discovery orders, despite a good faith basis to seek to protect these third parties' names;

(b) The trial court should not have appointed a state officer, at Defendant's expense, to work for Plaintiff "cold-calling" sexual abuse victims;

(c) The trial court should not have admitted as trial evidence a document (the matrix) that the trial court's own order recognizes contains irrelevant information;

(d) The trial court should not have sanctioned the Archdiocese in the absence of any colorable prejudice; and

(e) The trial court should not have ordered the release of dozens of names of accused and victims spanning up to sixty years of allegations. The disclosure constitutes a gross violation of third party privacy rights and, perhaps

most critically, there is unrebutted evidence from expert medical professions who work with sexual abuse victims that such disclosure will be harmful to them.[7]

11. The writ of prohibition is the proper tool to prevent such an abuse of judicial discretion, irreparable harm, and exercise of extra-jurisdictional power.[8] Missouri courts specifically recognize that "[p]rohibition is the proper remedy for an abuse of discretion during discovery."[9] Such a writ is specifically held "an appropriate remedy . . . when a trial court has improperly ordered discovery of confidential material."[10]

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[7] *See* Suggestions in Support, Legal Argument §§ 1-5.

[8] *State ex rel. Ford Motor Co. v. Manners*, 239 S.W.3d 583, 586 (Mo. 2007) (quoting *State ex rel. Broadway-Washington Assoc. v. Manners*, 186 S.W.3d 272, 274 (Mo. 2006)).

[9] *State ex rel. Ford Motor Co. v. Messina*, 71 S.W.3d 602, 607 (Mo. 2002) (citing *Plank*, 831 S.W.2d at 927-28); *State ex rel. Kawasaki Motors Corp, U.S.A. v. Ryan,* 777 S.W.2d 247, 251 (Mo. App. 1989); *State ex rel. Anheuser v. Nolan*, 692 S.W.2d 325, 327 (Mo. App. 1985)).

[10] *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608, 610 (Mo. 2007) (citing *State ex rel. Pooker v. Kramer*, 216 S.W.3d 670, 672 (Mo. 2007) (making writ of prohibition absolute where discovery order went beyond proper scope of discoverable evidence)).

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12. In fact, the Missouri Supreme Court has granted a Writ of Prohibition to restrain the disclosure of just a fraction of the third party material that Respondent Judge here has ordered produced. In *State ex rel. Delmar Gardens N. Operating, LLC v. Gaertner*, 239 S.W.3d 608 (Mo. 2007), the Court made absolute a writ of prohibition restraining the disclosure of request for disclosure of a single third party employee's personnel file.[11] Here, we are talking about dozens of third parties' information being disclosed.

WHEREFORE, Relators Archdiocese of St. Louis and Archbishop Robert J. Carlson request that this Court issue its writ of prohibition to restrain Respondent Judge from sanctioning the Defendants for redacting the names of third parties in discovery in this case, likewise restrain Respondent Judge from compelling disclosure of the names of those third parties, and otherwise restrain Respondent Judge from the Order of December 31, 2013.

[11] Although *Delmar Gardens* involved a writ of prohibition, it stated that "[w]rits" can be appropriate where the trial court improperly orders discovery of confidential material. 239 S.W.3d at 610. Thus, to the extent that a writ of mandamus may also be available, such a writ may issue for the same reasons.

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Respectfully submitted,

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