

1 Archdiocesan records that the Archdiocese reviewed (in un-redacted form) and produced
2 based on its knowledge of those records and the manner in which they are stored.

3 The fact that responsive documents “have been produced to Plaintiffs’ counsel in
4 various litigation and stages of the years” does not provide Plaintiffs with some greater insight
5 into which documents are responsive, particularly when the vast majority of that litigation had
6 nothing to do with Edward Courtney or O’Dea High School.

7 For example, Plaintiffs have no way of knowing if the Archdiocese withheld or
8 redacted information in earlier litigation on the grounds that it was “irrelevant” because it
9 dealt with Courtney, O’Dea, or the Christian Brothers – the first cases involving that subject
10 matter were not filed until 2004, well after the Archdiocese’s production in *R.C.*¹

11 **Second**, even if the burden was the same or substantially similar, which it is not, the
12 Archdiocese’s reliance on CR 33(c) is misplaced because it has made no effort to “... specify
13 the records from which the answer may be derived or ascertained...” CR 33(c).

14 The Archdiocese’s vague referral to documents and privilege logs produced in other
15 litigation is not sufficient. CR 33(c) mandates that a party must provide “[a] specification ...
16 in sufficient detail to permit the interrogating party to locate and to identify, as readily as can
17 the party served, the records from which the answer may be ascertained.”²

21 ¹ The Archdiocese suggests that it has not produced more than 30,000 pages of documents, presumably to
22 support its argument that the burden on Plaintiffs is minimal, but it does not articulate how many pages of
documents it has produced.

23 ² Contrary to the Archdiocese’s opposition brief, Plaintiffs’ motion identifies each discovery response where the
24 Archdiocese refers to documents or privilege logs produced in earlier litigation or that it asserts are already in
Plaintiffs’ possession. Cf. Archdiocese’s opposition brief at 6, ll. 12-15, *with* Plaintiffs’ Motion to Compel
Defendant Corporation of the Catholic Archbishop of Seattle to Produce Responsive Records, at 2 (footnotes 1
and 3-5).

25 Plaintiffs assume the Archdiocese has not withheld any other responsive documents on the same grounds without
26 acknowledging as much in their discovery responses as the Archdiocese bears the burden of making those
objections.

1 Even if the Archdiocese could properly invoke CR 33(c), which it cannot, that rule
2 requires it to provide the specification described above. It is also worth noting that CR 33(c)
3 only applies to interrogatories, not requests for production.
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5 **Third**, the Archdiocese’s reliance on CR 34(b) is misplaced because the Archdiocese
6 has not produced its records “as they are kept in the usual course of business” and it has failed
7 to “organize and label them to correspond with the categories in the request.” CR 34(b).

8 If the Archdiocese wants to produce responsive records as they are “kept in the usual
9 course of business,” then it must allow Plaintiffs to inspect its discovery files so they can
10 determine which documents are actually responsive. But producing bits and pieces of records
11 over seven years does qualify as producing records “in the usual course of business.”

12 The Archdiocese is aware of this requirement because they demanded the same when
13 the Plaintiffs in this litigation referred to documents in their possession from the earlier
14 Courtney litigation. Plaintiffs’ counsel allowed the Archdiocese to visit their office and make
15 copies of whatever non-privileged documents from the *B.B.* or *G.W.* litigation that it wanted.
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17 **Fourth**, the Archdiocese’s reliance on the *R.C.* protective order is misplaced because
18 it states that “[n]othing in this Order is intended to preclude any party’s rights under the Civil
19 Rules.”³ It is also unclear why the Archdiocese is so “outraged” that some documents and
20 privilege logs from earlier litigation have been destroyed when that order allowed Plaintiffs’
21 counsel to do just that.⁴
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25 ³ Stipulation and Protective Order, Declaration of Karen A. Kalzer in Support of Defendant Archdiocese’s
26 Opposition to Plaintiffs’ Motion to Compel Corporation of the Catholic Archbishop of Seattle to Produce
Responsive Documents (“Kalzer Decl.”), Ex. 1, at 3, ll. 4-6.

⁴ *Id.* at 5-6.

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CERTIFICATE OF SERVICE

I, **Linnea Butler**, hereby declare under penalty of perjury under the laws of the State of Washington that I am employed at Pfau Cochran Vertetis Kosnoff PLLC, and that on this 24th day of August, 2009, I served Plaintiffs' Reply in Support of Plaintiffs' Motion to Compel Defendant Corporation of the Catholic Archbishop of Seattle to Produce Responsive Records via E-Service, Legal Messenger, and/or U.S. Mail as indicated below by directing delivery to the following individuals:

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ND: 4831-2500-0708, v. 1