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4 **ASSIGNED TO THE HONORABLE THERESA DOYLE**
5 **HEARING DATE: FEBRUARY 28, 2017**
6 **WITHOUT ORAL ARGUMENT**

7 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
8 **FOR KING COUNTY**

9 A.S.,

10 Plaintiff,

NO. 16-2-11574-8 SEA

11 v.

PLAINTIFF'S MOTION TO COMPEL

12 CORPORATION OF THE CATHOLIC
13 ARCHBISHOP OF SEATTLE, a sole
corporation,

14 Defendant.

15 **I. RELIEF REQUESTED**

16 Plaintiff A.S. respectfully requests the Court order the defendant to produce
17 unredacted copies of documents containing the names of other victims of Father Jerome
18 Dooley and witnesses to his abuse because (1) the information and documents are
19 discoverable, particularly where the Archdiocese denies that it knew or should have known
20 that Dooley posed a danger to children, (2) A.S. has a substantial need for the information and
21 documents and cannot obtain the same or substantial equivalent through other means, and (3)
22 Plaintiff has proposed protective terms that balance the privacy interests of the other
23 individuals who were abused by Dooley with Plaintiff's substantial need for the information.
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1 **II. BACKGROUND FACTS**

2 **A. Plaintiff’s Allegations**

3 Plaintiff A.S. was sexually abused by Father Dooley in 1965 and 1966 when he was in
4 the third grade at Sacred Heart Catholic Church and School in Tacoma, Washington. Plaintiff
5 further alleges the defendant knew or should have known that Father Dooley posed a danger
6 to him and failed to take reasonable steps to protect him from that danger.¹ The defendant
7 denies these allegations.²

8 **B. Plaintiff’s Request for Information**

9 Plaintiff has requested in discovery all documents reflecting complaints, concerns, or
10 allegations that Father Dooley had sexually touched or acted inappropriately with another
11 person.³ Plaintiff asserts this information is discoverable because it may lead to the discovery
12 of evidence regarding (1) whether the defendant knew or should have known that Father
13 Dooley posed a danger to Plaintiff, and (2) whether the defendant failed to take reasonable
14 steps to protect Plaintiff from Father Dooley despite knowing that he posed a danger to
15 children.

16 Defendant has provided Plaintiff with documents that are heavily redacted.
17 Importantly, the redactions include the names of victims who complained, or may have
18 complained, to the Archdiocese and likely have information about Dooley’s abuse of
19 children.⁴ The records also include the names of another priest who witnessed Dooley’s
20 abuse of children.⁵

21 Plaintiff asserts that Father Dooley sexually abused other children, and that some of
22 those other children may have complained to the defendant that they were being abused
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24 ¹ See generally Complaint for Damages.

25 ² See generally Defendant’s Answer to Plaintiff’s Complaint for Damages and Affirmative Defenses.

26 ³ Defendant’s Response to Plaintiff’s First Set of Interrogatories and Requests for Production to Defendant Corporation of the Catholic Archbishop of Seattle, at Request for Production No. 23, Pfau Decl., Ex ___.

⁴ *Id.*

⁵ *Id.*

1 before or during the time that Plaintiff was abused by Dooley. Despite that notice, Plaintiff
2 asserts the defendant failed to protect him and other children from Dooley. Likewise,
3 Plaintiff asserts that if a child or family member complained to the defendant about Father
4 Dooley after Plaintiff's abuse ended in 1966, how the defendant handled that complaint may
5 be relevant to Plaintiff's assertions that the defendant was not taking reasonable steps to
6 protect children from the danger posed by Dooley.

7 Plaintiff's assertions are well grounded. For example, as noted above, the defendant
8 has produced records indicating that there were at least two boys who were sexually abused
9 by Father Dooley during his time as a priest in the Archdiocese of Seattle.⁶

10 In 2004, the Archdiocese received complaints that Father Dooley sexually abused
11 boys before and during the same time period when Father Dooley was sexually abusing
12 Plaintiff.⁷ One victim, who was twelve years old, stated that Dooley would provide him
13 alcohol and take him to strip clubs in Portland, along with another priest (name redacted).
14 The other victim stated that he was thirteen years old when Father Dooley first abused him.⁸
15 Father Dooley provided him alcohol and took him on overnight trips, including to strip clubs
16 in Portland. During these trips, Father Dooley gave him marijuana, showed him pornographic
17 films, and purchased sex with prostitutes.⁹ Dooley molested him in the hot tub on many
18 occasions ("frequently") and anally raped him "two or three" times.¹⁰

19 Plaintiff has a substantial need for the identity of these witnesses because he must
20 prove that (1) the defendant knew or should have known that Father Dooley posed a danger to
21 Plaintiff, and (2) the defendant failed to take reasonable steps to protect Plaintiff from Father
22 Dooley despite knowing that he posed a danger to children. Moreover, Plaintiff has no other
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24 ⁶ Pfau Decl. at Ex. 1.

25 ⁷ *Id.*

26 ⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

1 way to obtain the same or substantially equivalent information because Father Dooley is
2 deceased and the only other source of this information is in the Archdiocese's files.

3 **D. The Parties Met and Conferred Regarding this Motion**

4 On January 25, 2017, the parties conducted a CR 26(i) conference during which
5 Plaintiff's counsel requested unredacted copies of the records in this matter pertaining to
6 complaints about Dooley.¹¹ The defendant stated that it will not comply with Plaintiff's
7 request absent a court order.¹²

8 **III. EVIDENCE RELIED UPON**

9 This motion relies upon the Declaration of Michael T. Pfau in Support of
10 Plaintiff's Motion to Compel ("Pfau Decl."), as well as the pleadings and
11 evidence previously filed in this case.

12 **IV. ISSUE PRESENTED**

13 Should the Court order the defendant to produce unredacted documents
14 containing the names of other witnesses and victims of Jerome Dooley when (1)
15 the information and documents are discoverable, particularly where the
16 Archdiocese denies that it knew or should have known that Dooley posed a
17 danger to A.S., (2) A.S. has a substantial need for the information and documents,
18 and cannot obtain the same or substantial equivalent through other means, and (3)
19 Plaintiff has proposed protective terms that balance the privacy interests of the
20 other individuals who were abused by Dooley with Plaintiff's substantial need for
21 the information?

22 **V. LEGAL ARGUMENT**

23 **A. The Information Sought is Discoverable because it is Reasonably Calculated to
24 Lead to the Discovery of Admissible Evidence**

25 The information sought is highly relevant to two threshold issues in this case: (1)
26 whether the defendant knew or should have known that Father Dooley posed a danger to A.S.,
and (2) whether the defendant took reasonable steps to protect him from that danger. CR
26(b)(1).

¹¹ Pfau Decl. at ¶ 4.

¹² *Id.*

1 The Washington Supreme Court has rejected any argument that similar evidence is
2 irrelevant or “too burdensome” to produce. *T.S. v. Boy Scouts of Am.*, 157 Wn.2d 416, 421,
3 424-25, 138 P.3d 1053 (2006) (BSA’s knowledge of pedophilia was relevant to whether it
4 “was aware or should have been aware of the extent of the pedophilia threat during the period
5 at issue ... and whether [BSA’s] policies and procedures were timely and effective responses
6 to the threat”); *see also C.J.C. v. Corporation of the Catholic Bishop of Yakima*, 138 Wn.2d
7 699, 721-22, 985 P.2d 262 (1999) (a victim of childhood sexual abuse must prove the
8 defendant failed to take reasonable steps to protect him from foreseeable harm). The Court of
9 Appeals also recently concluded that such information is discoverable. *N.K. v. Corporation of*
10 *the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints, et al.*, 175 Wn. App.
11 571 (2013).

12 **B. A.S. has a Substantial Need for this Information**

13 The information sought is relevant to key liability issues in this case and A.S. has no
14 ability to obtain the same or substantially equivalent information through other means. It is
15 imperative Plaintiff be able to identify and interview witnesses who have information about
16 Father Dooley’s abuse and the Archdiocese’s knowledge of Father Dooley’s abuse,
17 particularly where Father Dooley is deceased and the Seattle Archdiocese has not admitted
18 liability. The only source of this highly relevant information are the witnesses identified in
19 the documents in the Archdiocese’s possession, which it refuses to produce without
20 redactions.

21 Identifying and interviewing these witnesses is essential to the Plaintiff’s case because
22 these witnesses may have information relevant to show the Archdiocese knew or should have
23 known that Father Dooley was a danger to children. Indeed, one of the victims reported that
24 Father Dooley told him (in the 1960s) that Archbishop Connelly knew about their relationship
25 and ordered him to stay away from the victim.¹³ The records also indicate that another priest
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¹³ Pfau Decl., Ex 1.

1 witnessed, and may have participated in, his abuse. Since the Archdiocese has not admitted
2 liability, it is anticipated the defendant will argue it did not know Fr. Dooley was a danger to
3 children until it received complaints in 2004. But these victims' complaints strongly suggest
4 that is not accurate. Plaintiff should be allowed to explore this information in discovery and
5 present an accurate picture of what the Archdiocese's knew about Dooley's abuse to a jury.

6 **C. The Privacy Interests of Third Parties are Adequately Protected**

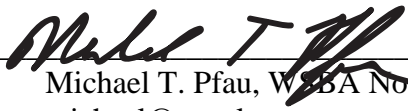
7 While Plaintiff has a substantial need for this information and cannot obtain it through
8 other means, Plaintiff, as an abuse survivor himself, understands the need to protect the
9 privacy interests of third parties. For that reason, the proposed order that accompanies this
10 motion imposes terms that are intended to protect such privacy interests, including ensuring
11 that names must be redacted prior to filing materials that contain this information with the
12 Court.
13

14 **VI. CONCLUSION**

15 For the foregoing reasons, Plaintiff respectfully requests that the Court grant
16 Plaintiff's motion to compel.

17 Dated this 17th day of February, 2017.

18 PFAU COCHRAN VERTETIS AMALA PLLC

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21 By  _____
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22 Vincent T. Nappo, WSBA No. 44191
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24 Attorneys for Plaintiff
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1 **CERTIFICATE OF SERVICE**

2 I, **Bernadette Hacker**, hereby declare under penalty of perjury under the laws of the
3 State of Washington that I am employed at Pfau Cochran Vertetis Amala, PLLC, and that on
4 this 17th day of February, 2017, I served Plaintiff’s Motion to Compel, and the Declaration of
5 Michael T. Pfau in support thereof, via E-Service, Legal Messenger, and/or U.S. Mail as
6 indicated by directing delivery to the following individuals:
7

8 *Counsel for the Corporation of the Catholic Archbishop of Seattle*
9 Michael A. Patterson, Esq.
10 Patterson Buchanan Fobes, et al.
11 2112 Third Ave., Ste. 500
12 Seattle, WA 98121

13 
14 Bernadette Hacker, Legal Assistant