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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

John Dorman, Individually, and Joel Gamboa, Individually, Plaintiffs, vs. Defendant Doe 1, La Jolla Church; Defendant Doe 2, Linda Vista Church; Defendant Doe 3, Supervisory Organization; Defendant Doe 4, Perpetrator; and Does 5 through 100, Defendants.	Case No: 37-2010-00092450-CU-PO-CTL **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS MOTION TO ALLEGE PUNITIVE DAMAGES** **Date: 12-2-11** **Time: 10:30 a.m.** **Judge: Steven R. Denton** **Dept: C-73**

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I. INTRODUCTION

Plaintiffs John Dorman and Joel Gamboa seek leave to file a Third Amended Complaint alleging claims for punitive damages against Defendants. Specifically, John Dorman seeks to assert a claim for punitive damages against Defendant Linda Vista Spanish Congregation of Jehovah's Witnesses, San Diego, California (Linda Vista) and Defendant Watchtower Bible and Tract Society of New York, Inc. (Watchtower). Joel Gamboa seeks to assert a claim for punitive damages against Linda Vista, Watchtower and Defendant La Jolla Spanish Congregation of Jehovah's Witnesses, San Diego, California (La Jolla),[1] pursuant to Code of Civil Procedure § 425.14.[2] Plaintiffs were both molested by Gonzalo Campos (Campos) on numerous occasions when they were minors associated with Defendants.

II. FACTUAL HISTORY

A. Campos' Ordination and Elevation in the Jehovah's Witness Faith

The Jehovah's Witness Faith is organized in a hierarchical structure. During the relevant periods of time, the Watchtower sat atop the hierarchy with respect to issues of appointment of leaders (called Elders and Ministerial Servants) in local congregations, and provided local congregation leaders with direction when difficult issues arose, including issues relating to sexual abuse of children by Jehovah's Witnesses. Local congregations of Jehovah's Witnesses administer the faith on a day to day basis and implement church policy and practice that is dictated from higher levels in the organizational structure.

Field Service is an important part of the Jehovah's Witness faith. Field Service involves members of the congregation going from door to door and preaching to people living in the community. Not everyone is permitted the privilege of participating in Field Service. Instead, that privilege is reserved for people who are "Publishers." (PE 2, Deposition of Dennis Palmer at p. 14:3-7; PE 3, Deposition of Gonzalo Campos at p.18:1-11 ["a publisher is a person

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[1] Plaintiffs also seek leave to identify Defendant La Jolla as "Playa Pacifica Spanish Congregation of Jehovah's Witnesses." La Jolla changed its name and location in approximately 1994 from "La Jolla Spanish Congregation of Jehovah's Witnesses" to "Playa Pacifica Spanish Congregation of Jehovah's Witnesses." (Plaintiffs' Exhibit 1, January 28, 1994 letter.) Such an amendment would result in a more accurate pleading.

[2] All further section references are to the Code of Civil Procedure unless noted.

who preaches home-to-home the good news, and he is authorized to preach this good news door-to-door" by the "elders of the congregation"])(underline emphasis added.)

If someone wants to participate in Field Service, he or she must request to be approved as a Publisher. (PE 4, Deposition of Ramon Preciado at pp. 12:16-13:3.) A committee of Elders within the congregation will consider that request. (PE 4, Preciado Depo at p. 13:4-9.) The committee will interview the prospective Publisher and determine whether he or she has sufficient knowledge of the bible to participate in Field Service, and will also determine whether he or she is living his or her life in accordance with Christian Bible principles. (PE 4, Preciado Depo at p. 13:10-15; PE 2, Palmer Depo at 14:8-25.) Since Publishers are given the privilege of representing the congregation in the community, they must not be engaged in immorality. (PE 4, Preciado Depo at pp. 13:10-14:10; PE 2, Palmer Depo at p. 14:3-25.) Campos went through the process of becoming approved as a Publisher, and was authorized by Linda Vista, and later La Jolla to perform Field Service and represent the congregation in the community. (PE 4, Preciado Depo at p. 17:1-3.)

Publishers can be either Baptized or Un-Baptized, with greater rights and responsibilities being reserved for Publishers who have been Baptized. (PE 3, Campos Depo at pp. 85:8-86:8.) Once a male Publisher has been Baptized, he can lead field service; give Bible Study, "participate in the school and then with time, he can receive certain privileges if he is a male, such as becoming a ministerial servant or elder."[3] (PE 3, Campos Depo at pp. 85:8-20, 86:7-87:13.) A Baptized Publisher can also work as a missionary or serve as a Pioneer. (PE 3, Campos Depo at pp. 85:14-20, 86:4-8.) **Baptism as one of Jehovah's Witness is an ordination as a minister of the Jehovah's Witness faith.** (PE 3, Campos Depo at p. 83:11-18.)

To be baptized as one of Jehovah's Witnesses a prospective member must study the bible. Campos for instance, studied for at least six months and maybe as many as twelve months before he was able to become baptized. (PE 3, Campos Depo at pp. 82:14-83:6.) Campos studied with the Baptized Publisher once per week during this time prior to being baptized, and also studied on his own. (PE 3, Campos Depo at p. 83:1-10.) Prior to becoming baptized,

[3] Female Publishers do not have the same standing within the Jehovah's Witness faith as male Publishers. (PE 3, Campos Depo at pp. 86:7-87:13.)

Campos was interviewed by one or two Elders of the congregation, and was asked a series of approximately eighty questions based on his study of the Bible that he had to answer thoughtfully prior to being ordained. (PE 3, Campos Depo at pp. 81:17-82:14.)

When a Publisher gives Bible Study, he is required to complete a form and turn that form into the Congregation Secretary. (PE 3, Campos Depo at p. 90:8-15.) The form indicates the name and address of the person to whom the Publisher has given Bible Study as well as the dates of each session. (PE 3, Campos Depo at p. 91:17-20.) Publishers are also required to file a Service Report with the Congregation Secretary detailing the amount of time they spend in service. (PE 3, Campos Depo at pp. 89:13-90:7.) Local Congregation leaders control what particular areas within their territory will be targeted for Field Service on a particular day.

A Pioneer is a Baptized Publisher who has committed to spend a certain amount of time per month preaching. (PE 2, Palmer Depo at p. 16:4-8.) To become a Pioneer, a Publisher must be approved by a committee of Elders. (PE 4, Preciado Depo at p. 15:12-21.) In addition to maintaining the requirements of good morals to be a Baptized Publisher, the Elders must also determine that the applicant's track record shows that he will be able to meet his hourly obligations if he is approved. (PE 2, Palmer Depo at pp. 16:17-17:14.)

A Ministerial Servant is a male Baptized Publisher who has been delegated added responsibilities within the congregation. (PE 2, Palmer Depo at pp. 18:5-20:23.) Male Baptized Publishers are recommended to become Ministerial Servants by the Body of Elders. (PE 4, Preciado Depo at pp. 18:23-19:13, 21:4-19.) Watchtower then has the final say as to whether the appointment is confirmed. (PE 2, Palmer Depo at p. 20:16-23.)

An Elder is an overseer of the congregation. (PE 2, Palmer Depo at p. 21:6-15.) Elders coordinate the activities of the congregation, including meetings and field service. (PE 2, Palmer Depo at p. 21:6-15.) Elders also help members deal with problems that may arise in their personal lives. (PE 2, Palmer Depo at p. 21:6-15.) Prospective Elders are selected from among the congregation's Ministerial Servants and thoroughly vetted by the Body of Elders. (PE 2, Palmer Depo at pp. 21:17- 22:12.) If a Ministerial Servant meets the qualifications to become an Elder, the Body of Elders makes a recommendation to Watchtower. (PE 4, Preciado Depo at p. 24:8-16.) Watchtower approves or rejects the appointment. (PE 4, Preciado Depo at p. 24:8-16.)

Campos was ordained as a minister of the Jehovah's Witness Faith when he was baptized in 1980. (PE 3; Campos Depo at pp. 15:25-16:3.) Prior to the molestation of Plaintiffs, Campos had been thoroughly trained and tested by Linda Vista, and his morals and character had been vetted and approved by the Body of Elders of Linda Vista. As a result of this process, Campos was authorized to represent Linda Vista in door to door preaching, enter the homes of members of the congregation and the larger community to teach bible study sessions and otherwise preach the beliefs of the Jehovah's Witness faith. Following his ordination, Campos' preaching activities were thoroughly monitored and controlled by the local congregation. Campos was appointed as a Ministerial Servant on December 22, 1988. (PE 5, March 29, 1995.) Campos was appointed as an Elder of La Jolla in June of 1993. (PE 5, March 29, 1995.) Campos served as the Congregation Secretary of La Jolla. (PE 3, Campos Depo at pp. 104:18 - 105:19.) Campos also served as a Pioneer. (PE 3, Campos Depo at p. 92:13-18.)

No matter how Defendants attempt to paint the picture, at all times relevant Campos had a status far greater than any Un-Baptized Publisher, or any female Baptized-Publisher, including his minor victims. Equally, if not more important, Campos was an ordained minister in the Jehovah's Witness Church, and his minor victims were not.

B. The Sexual Abuse of Plaintiffs

John Dorman was sexually molested by Campos on several occasions between 1983 and 1985. (PE 6, Deposition of John Dorman at pp. 35:10-42:15.) The abuse included fondling, oral copulation and sodomy. (PE 6, Dorman Depo at p. 39:3-42:15.) Campos has admitted to the abuse. (PE 3, Campos Depo at pp. 139:22-141:24.)

Joel Gamboa was sexually abused by Campos between 1988 and December of 1994. (PE 7, June 9, 1995 letter; PE 3, Campos Depo at p. 78:8-15.) The abuse included oral copulation, sodomy and mutual masturbation. (PE 7, June 9, 1995 letter.) Campos has admitted to the abuse. (PE 3, Campos Depo at p. 78:8-15.) Campos gave Bible Study sessions to Joel Gamboa. (PE 3, Campos Depo at p. 48:6-8.) La Jolla was aware, or should have been aware, that Campos taught Bible Study to Joel Gamboa. (PE 3, Campos Depo at p. 90:8-25.)

C. The 1982 Complaint

In approximately 1982, Campos molested a young member of Linda Vista. (PE 8,

Depo of John Doe at pp. 15:10-16:18; PE 3, Campos Depo at pp. 133:5-135:2.) Immediately following the incident, John Doe, informed his mother of the abuse. (PE 8, Doe Depo at pp. 10:10-18, 13:17-21.) Campos confessed his inappropriate sexual conduct to Doe's mother just after it happened. (PE 3, Campos Depo at pp. 24:24-25:4.) Doe's mother reported the abuse to multiple Elders associated with Linda Vista. (PE 9, Deposition of Jesus Montijo at p. 36:2-19; PE 10, Deposition of Justino Diaz at pp. 28:16-29:10.) The allegation was brought before the entire Body of Elders of Linda Vista. (PE 9, Montijo Depo at p. 37:3-15.) Two Elders were assigned to investigate the accusation. (PE 9, Montijo Depo at pp. 37:9-38:22) Within one or two days of the molestation, Doe was interviewed by at least one Elder from Linda Vista and informed the Elder(s) of the abuse by Campos. (PE 8, Doe Depo at pp. 10:24-11:2; 12:17-22.) Campos was also interviewed by multiple Elders from Linda Vista and admitted that he "had touched [John Doe] inappropriately." (PE 3, Campos Depo at pp. 24:5-25:20.)

The Elders did not punish Campos. (PE 9, Montijo Depo at p. 42:7-42:25.) Justino Diaz, an Elder at the time of the accusation, considered it to be a minor matter since Campos' mother and the victim's mother were apparently able to work out some resolution. (PE 10, Diaz Depo at pp. 34:9-21, 35:4-7.) Diaz knew that molestation was a crime and that once a person has molested a child, he may repeat that conduct. (PE 10, Diaz Depo at p. 35:8-25.) Nonetheless, the police were not called, Campos' service privileges were not restricted, further victims were not sought, and the congregation was not warned about the dangers posed by Campos. (PE 9, Montijo Depo at 42:2-19.) Campos continued to be allowed to preach door to door, and to give bible study sessions to minor children. (PE 3, Campos Depo at pp. 137:9-138:7.)

D. The 1986 Complaint

In 1986, Campos' sexual abuse of children was again brought to the attention of the Elders of Linda Vista. A Judicial Committee was formed at that time to investigate, determine Campos' guilt and level of repentance, and to impose punishment. (PE 5, March 29, 1995 letter; PE 7, June 9, 1995 letter; PE 11, November 13, 1996 letter; PE 12, July 24, 1999 letter.)

When a grave sin committed by a congregation member is brought to the attention of a local congregation's Elders, two Elders are assigned to investigate. (PE 9, Montijo Depo at p. 47:6-22.) Those two Elders determine if there is a sufficient justification for the creation of a

Judicial Committee. (PE 9, Montijo Depo at p. 28:12-21.) If there are either multiple witnesses to the sin, or if the accused confesses his sin, a Judicial Committee will be formed. (PE 9, Montijo Depo at p. 29:7-21.) The Judicial Committee will be comprised of the original two Elders assigned to investigate, and usually at least one more Elder. (PE 4, Preciado Depo at p. 32:8-15.) The Judicial Committee will then determine what punishment is appropriate. (PE 4, Preciado Depo at pp. 37:3-42:19.) The sinner can be disfellowshipped, which is a period of expulsion from the local congregation, or if the Judicial Committee determines the sinner is truly repentant, he or she can be reproved, which entails some public or private censorship but no expulsion from the congregation. (PE 9, Montijo Depo at pp. 30:22-31:18.) In order for a person to be reproved, he must first have admitted his sin.

The Judicial Committee formed in 1986 to look into the Campos' alleged sexual misconduct determined that Campos was repentant for his sins and therefore chose to reprove him, rather than expel him from the congregation. (PE 5, March 29, 1995 letter.) Specifically, the Judicial Committee imposed a nine month period of private censorship on Campos, during which time his service privileges were somewhat restricted. (PE 5, March 29, 1995 letter.)

Plaintiffs anticipate Defendants will claim that no Judicial Committee occurred in 1986, and that this argument will be based on testimony given by Gonzalo Campos. While Plaintiffs believe this testimony to be unreliable and unconvincing, the existence of any dispute as to the occurrence of the 1986 Judicial Committee is inconsequential to this motion. As discussed in more detail below, this Court's obligation is to look at the evidence presented and determine whether the evidence submitted meets the low standard allowing for amendment. *Rowe v. Superior Court* (1993) 15 Cal.App.4th 1711, 1722. The Court is not to weigh Defendants' evidence against that of Plaintiffs, but must instead determine whether Defendants' evidence defeats the evidence submitted by Plaintiffs as a matter of law. *Id.* Since the question of whether to credit the several documents submitted by Plaintiffs showing the occurrence of the 1986 Judicial Committee or to believe the unreliable and sometimes confused testimonial denial of Campos is an issue of credibility, Plaintiffs' evidence must be credited and the 1986 Judicial Committee must be understood for purposes of this Motion to have occurred.

E. The Division of the Linda Vista Congregation

During 1986 or 1987, Linda Vista had grown large enough that it could divide into two distinct congregations. (PE 13, Letter Date Stamped November 20, 1986.) At that time, La Jolla came into existence. Linda Vista was the "parent congregation" of La Jolla. (PE 13, Letter Date Stamped November 20, 1986.) This means that the complete membership originally comprising La Jolla were former members of Linda Vista. (PE 2, Palmer Depo at pp. 44:20-45:16.) In addition, the inaugural Elders of La Jolla, Luis Rivera and Ramon Preciado, had previously been elders at Linda Vista. (PE 13, Letter Date Stamped November 20, 1986.) Luis Rivera had served on the 1986 Judicial Committee that investigated Campos' sexual abuse of children.[4] (PE 5, March 29, 1995 Letter.)

La Jolla was created from, and comprised entirely of, members of a congregation that had actual knowledge of Campos' repeated sexual abuse of children. That knowledge is not magically expunged from the consciousness of the members and Elders of the newly formed Congregation. Instead, the members and Elders of La Jolla brought with them knowledge of Campos' past sexual abuse of children. In addition, Luis Rivera, who served on the Judicial Committee that heard Campos' confession in 1986 was an inaugural Elder of La Jolla, thereby giving the newly formed congregation immediate and actual knowledge of Campos's history.

F. The Dorman Complaint in April of 1994

In April of 1994, John and Manuela Dorman learned that their son John had been sexually molested by Campos. (PE 14, April 11, 1994 letter.) Upon learning that her son had been molested, Mrs. Dorman called Campos and confronted him. (PE 14, April 11, 1994 letter.) Campos was an elder of La Jolla at the time of the confrontation. At that time, the Dormans sent a letter to Mrs. Dorman's local congregation, accusing Campos of sexually abusing their son. (PE 14, April 11, 1994 letter.) The letter of complaint was forwarded to Watchtower. (PE 15, April 13, 1994 letter.) Watchtower held onto the letter for almost two months, then forwarded it

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[4] Defendants will likely argue that Luis Rivera was not on a Judicial Committee concerning Campos at any time, let alone 1986. This argument will be based on Luis Rivera's deposition testimony. However, whether to credit a document signed by Rivera that demonstrates that Rivera was a member of such a Judicial Committee, or Rivera's deposition testimony is a credibility determination that is improper in the context of this motion. Plaintiffs' evidence must be accepted.

to La Jolla. (PE 16, June 9, 1994 letter.)

1. Campos Continued to Serve as an Elder, Congregation Secretary and Pioneer Even After the Dorman Complaint was Received

The forwarding instructions from Watchtower to La Jolla asked for an investigation into the allegations to be conducted, and for a prompt reply to be sent back to Watchtower regarding the matter. (PE 16, June 9, 1994 Letter.) Upon receiving the letter, Campos was asked by an Elder of La Jolla whether the accusations were true, and Campos confirmed the allegations. (PE 3, Campos Depo at pp. 51:21-52:11.)

Notwithstanding Campos' confession, almost one full year elapsed between Manuela Dorman's phone call to Campos and concurrent letter to her local congregation and any response from La Jolla to Watchtower. More than eight months passed between Watchtower's letter to La Jolla and the Elders' reply. During that period of time, Joel Gamboa continued to be molested. (PE 7, June 9, 1995, letter.)

In addition, even after receiving a written complaint about the molestation of John Dorman, Campos continued to function in a leadership capacity in the congregation as an Elder, Secretary of the Congregation and as a Pioneer. (PE 17, April 4, 1995 letter; PE 5, March 29, 1995 letter; PE 3, Campos Depo at pp. 104:18-110:19.) In short, even though La Jolla had received a written complaint against Campos, and Campos had confessed to molesting John Dorman, Campos was not immediately suspended and continued to serve in high level positions within the Congregation for more than nine months.

2. Campos Continued to Hold Elevated Positions in the Congregation Even After the Dorman Complaint and Would not Have Been Removed Absent an Additional Complaint

When La Jolla responded to Watchtower with a letter regarding the Dorman allegation, the responsive letter indicated that Campos had been reproved years ago, and his restrictions had been lifted several months before he was appointed as a ministerial servant. (PE 5, March 29, 1995 letter.) La Jolla believed that the amount of time that had passed between the censure and Campos' elevation to Ministerial Servant (about 15 months) was sufficient, and closed the matter. (PE 5, March 29, 1995 letter.) Ultimately, Campos was disfellowshipped in June of 1995 for sexually abusing Joel Gamboa; not for sexually abusing John Dorman. (PE 7, June 9, 1995 letter; PE 3, Campos Depo at p. 124:3-13.) This subsequent abuse was discovered when

Gamboa's mother spoke to Elders of the congregation in May of 1995. (PE 5, June 9, 1995 letter.) Until the Gamboa complaint was received, Campos was not the subject of a Judicial Committee relating to the Dorman accusation, and would not have been disfellowshipped.

G. Campos' Reinstatement

After he was disfellowhipped in 1995, Campos repeatedly sought reinstatement as one of Jehovah's Witnesses. (PE 18, July 4, 1999 Letter.) In 1996, he confessed to the Elders that he had molested three additional children while serving as a Ministerial Servant at La Jolla. (PE 11, November 13, 1996 letter.) The Elders discussed the nature of the sexual acts committed by Campos in the correspondence with Watchtower, including acts of mutual masturbation, oral copulation and sodomy. (PE 7, June 9, 1995 letter.) Notwithstanding the horrible acts known to have been committed by Campos, Defendants quibbled about whether Campos' acts constituted abuse, or whether he could be considered "a person who is known as someone who has sexually abused a child." (PE 12, July 24, 1999 letter ["Did we understand correctly the explanation in The Watchtower? Is touching of the genitals considered sexual abuse?"]; PE 19, June 5, 2000 letter ["After having carefully analyzed and with prayer all factors of the case of Brother Campos, our opinion is that" he should not be given a responsible position in the congregation].) Campos was reinstated as one of Jehovah's Witnesses on April 21, 2000. (PE 20, June 9, 1995 letter (WT 000006.))

III. PLAINTIFFS MUST BE ALLOWED TO ALLEGE A CLAIM FOR PUNITIVE DAMAGES AGAINST DEFENDANTS

Section 425.14 provides that no claim for punitive or exemplary damages may be pled against "a religious corporation or religious corporation sole" unless permitted by court order after the plaintiff brings a motion to amend the complaint. Neither Linda Vista, nor La Jolla are incorporated, nor are they corporations sole. As a result, although Plaintiffs amply satisfy the requirements of Section 425.14, Plaintiffs need not meet the requirements of that statute, but should be allowed leave to amend on a simple showing of good cause.

As to Watchtower, Section 425.14 requires only that a plaintiff demonstrate the existence of sufficient evidence to establish a prima facie case for punitive damages, enough to sustain a favorable decision if the evidence submitted be credited under the clear and convincing

standard.[5] *Rowe*,15 Cal.App.4th at 1722. In considering the evidence, the trial court "is not required to make any factual determination or to become involved in any weighing process beyond that necessarily involved in determining whether a prima facie case for punitive damages exists." *Id.* Once the court concludes that such a case can be presented at trial, it must permit the proposed amended pleading to be filed. *Id.* In making this judgment, the court's consideration of the defendant's opposing affidavits does not permit a weighing of them against the plaintiff's supporting evidence, but only determination that they do not, as a matter of law, defeat that evidence. *Id.*

This standard requires "only that the plaintiff demonstrate to the court's satisfaction that sufficient evidence exists to go to the jury on the issue of punitive damages. That is, plaintiff has sufficient evidence, if credited, to meet the clear and convincing standard and the judge is unable to say that a reasonable jury could not find for plaintiff under that standard of proof." *Rowe*, 15 Cal.App.4th at 1722. If this Court cannot categorically find that no reasonable jury could find for Plaintiffs, judging the evidence under the clear and convincing standard, Plaintiffs must be permitted to allege a claim for punitive damages.

IV. PLAINTIFFS CAN RECOVER PUNITIVE DAMAGES AGAINST DEFENDANTS BASED ON THE WRONGFUL ACTS OF THE PERPETRATOR

A plaintiff may recover punitive damages against a defendant who has been guilty of oppression, fraud, or malice. Civil Code § 3294(a). The words oppression, fraud, and malice as used in Civil Code section 3294(a) are disjunctive, and proof of any of them will support an award of punitive damages. *Oakes v. McCarthy Co.* (1968) 267 Cal.App.2d 231, 262-63. According to *Weeks v. Baker & McKenzie*:

> Subdivision (b) [of Civil Code § 3294] authorizes the imposition of punitive damages on an employer in three situations: (1) when an employee was guilty of oppression, fraud or malice, and the employer with advance knowledge of the unfitness of the employee employed him or her with a conscious disregard of the rights and safety of others, (2) when an employee was guilty of oppression, fraud or malice, and the employer authorized or ratified the wrongful conduct, or (3) when the employer was itself guilty of the oppression, fraud or malice. (1998) 63 Cal.App.4th 1128, 1151.

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[5] "[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.* (2001) 25 Cal.4th 826, 851.

Thus, "[I]f the employer after knowledge or opportunity to learn of the agent's misconduct retains the wrongdoer in service, the employer may make himself liable in punitive damages."[6] *Coats v. Construction & General Laborers Local No. 185* (1971) 15 Cal.App.3d 908, 914. Defendants are subject to an award of punitive damages under each of the three justifications described in *Weeks*.

A. Defendants willfully retained Campos despite knowledge that he had acted, and would continue to act, in conscious disregard of the safety of others, and was guilty of fraud, oppression and malice

If an agent has acted in a manner that would subject himself to punitive damages, and the principal was aware of the agent's punishable conduct and continued to utilize him without regard to the safety of others, punitive damages may be imposed on the principal. *Weeks*, 63 Cal.App.4th at 1151.

"Malice" means "despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others."[7] Civil Code § 3294(c)(1). Malice has been described as requiring "an act conceived in a spirit of mischief or with criminal indifference toward the obligations owed to others." *Taylor*, 24 Cal.3d at 894. "Where the [perpetrator's] wrongdoing has been intentional and deliberate, and has the character of outrage frequently associated with crime, all but a few courts have permitted the jury to award in the tort action punitive or exemplary damages." *Id.* (internal quotations omitted.)

Campos has admitted to molesting numerous children during his tenure as an ordained minister of the Jehovah's Witness Church. (PE 11; November 13, 1996 letter; PE 21, August 18 1995 letter.) Campos sexually abused children from both La Jolla and Linda Vista. (PE 12, July 24, 1999 letter.) Campos abused minor boys and minor girls, often beginning the molestations when his victims were between the extremely young ages of 6 and 8. (PE 12, July 24, 1999

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[6] Punitive damages can similarly be awarded against a principal based on the misconduct of an agent when the principal authorized, ratified or approved the act, or, with knowledge of the agent's unfitness, the principal or a managing agent was reckless in retaining him. Restatement Second (Torts) § 909.

[7] Despicable conduct is conduct that is so vile, base, contemptible, miserable, wretched, or loathsome that it would be looked down on and despised by ordinary decent people. BAJI 14.72.1. Despicable conduct has also "been described as [having] the character of outrage frequently associated with crime." *Taylor v. Superior Court* (1979) 24 Cal.3d 890, 894

letter.) The abuse included acts of mutual masturbation, sodomy and oral copulation. (PE 7, June 9, 1995 letter.)

These admitted acts of molestation clearly establish a prima facie entitlement to punitive damages against Campos. Repeated acts of sexually molesting children is "despicable conduct", which "would be looked down on and despised by ordinary decent people." BAJI 14.72.1. The despicability of the conduct is evident in light of the large number of criminal statutes protecting children from sexual predation. *See* Cal. Pen. Code §§ 266j, 285(b)(1), 285(b)(2), 285(c), 286, 288(a), 288(b), 288a(b)(1), 288a(b)(2), 288a(c), 289(h), 289(i), 289(j), and 647.6.

1. Linda Vista and Watchtower were Aware of Campos' Molestation of Children Prior to the Abuse of John Dorman

Baptized Male Publishers are recommended for positions as Elders and Ministerial Servants of local congregations by the existing Body of Elders of the congregations and approved directly by Watchtower. Elders and Ministerial Servants of local congregations are agents of both the local congregation to which they have been appointed, as well as Watchtower. "As against a principal, both principal and agent are deemed to have notice of whatever either has notice of, and ought, in good faith and the exercise of ordinary care and diligence, to communicate to the other." *Santillan v. Roman Catholic Bishop of Fresno* (2008) 163 Cal.App.4th 4, 10. For this reason, notice of sexual abuse by a Baptized Publisher to an Elder or Ministerial Servant of a local Congregation, is notice of that fact to both that Congregation and Watchtower.

Linda Vista gained actual knowledge of the molestation of John Doe by Campos in 1982, when Doe's mother informed the congregation's Elders of the abuse. John Doe informed at least one Elder of Linda Vista of the nature of Campos' conduct. Campos confessed that he "had touched [John Doe] inappropriately." No actions were taken to hold Campos accountable for his actions, or warn the congregation about the danger created by Campos.

Watchtower and Linda Vista both received actual knowledge of Campos' molestation of John Doe in 1982. With actual knowledge of Campos' unfitness, Linda Vista and Watchtower continued to utilize him as an agent in conscious disregard of the rights and safety of others.

2. Linda Vista, La Jolla and Watchtower were Aware of Campos' Molestation of Children Prior to and During Abuse of Joel Gamboa

Following the 1982 complaint, Linda Vista again learned of the molestation of children by Campos in 1986. (PE 5, March 29, 1995 letter.) The Elders imposed only a nine month period of restriction. (PE 5, March 29, 1995 letter.) The authorities were not informed about Campos' crimes. (PE 9, Montijo Depo at p. 42:2-19.)

One of the Elders on the 1986 Judicial Committee regarding Campos, Luis Rivera, was one of the original Elders of La Jolla and continued to serve as an Elder of the Congregation until 1995. (PE 5, March 29, 1995 letter; PE 13, Letter Date Stamped November 20, 1986.) From its inception, La Jolla had actual knowledge of Campos' molestation of children.

In April of 1994, Watchtower was made directly aware of Dorman's molestation by Campos. (PE 14, April 11, 1994 letter; PE 15, April 13, 1994 letter.) La Jolla learned of the molestation in June of 1994. (PE 16, June 9, 1994 letter.) Elders at La Jolla interviewed an Elder from Linda Vista and reviewed Linda Vista's files. (PE 5, March 29, 1995 letter.) Campos continued to molest Joel Gamboa until December of 1994. (PE 7, June 9, 1995 letter.)

With actual knowledge of Campos' unfitness, Linda Vista only imposed a nine month period of private censure. After receiving the Dorman complaint, La Jolla allowed Campos to continue to serve as an Elder, Congregation Secretary and Pioneer, for almost one full year, during which time Joel Gamboa continued to be molested. Watchtower participated in the acts and omissions of La Jolla and Linda Vista directly and through its local agents, and also acted in conscious disregard of the rights and safety of others by waiting nearly two months to forward the Dorman letter of complaint to La Jolla, and then sat by for nine months after making La Jolla aware of the complaint without demanding any more immediate response or accountability. Each Defendant was aware of Campos' molestation of children before and during the abuse of Joel Gamboa and acted in conscious disregard of the rights and safety of others.

B. Defendants Ratified Campos' Sexual Abuse of Children

Ratification is a form of vicarious liability. The principal may become liable for an originally unauthorized tort of the agent by the subsequent ratification of the tort. 3 Witkin, Summary 10th (2005) Agency, § 164, p. 207. The failure to discharge an agent or employee despite knowledge of his unfitness is evidence tending to show ratification and may expose the

principal to punitive damages. *See McChristian v. Popkin* (1946) 75 Cal.App.2d 249, 256. "The theory of ratification is generally applied where an employer fails to investigate or respond to charges that an employee committed an intentional tort, such as assault or battery." *Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 170; *see also Murillo v. Rite Stuff Foods* (1998) 65 Cal.App.4th 833, 852 (finding that defendant ratified assault and battery in a sexual harassment context.) The Church Defendants ratified Campos' molestation of children by continuing to utilize him as an agent, even after gaining full knowledge of Campos molestation of children and the danger he posed to minors.

1. Linda Vista Ratified Campos' Molestation of Children

Linda Vista was made aware of Campos' molestation of John Doe in 1982. Linda Vista interviewed Doe twice, and Campos confessed to touching Doe inappropriately. (PE 8, Doe Depo at pp. 10:24-11:2, 12:17-22; PE 3, Campos Depo at pp. 24:5-25:20.) Linda Vista had full knowledge, or an opportunity to gain full knowledge regarding the abuse, but chose not to discipline Campos. By allowing Campos to retain his position as a Baptized Publisher, Linda Vista ratified Campos' sexual abuse of children. Later, in 1986, Linda Vista's Elders conducted a Judicial Committee regarding Campos' molestation of a child. (PE 5, March 29, 1995 letter.) Campos confessed and after a nine month period of private censure was fully reinstated. Linda Vista again ratified or approved the molestation of children by Campos.

2. La Jolla Ratified Campos' Molestation of Children

From its inception, La Jolla was aware of Campos' past sexual abuse of children; that his molestation of children had been the subject of a Judicial Committee in 1986; that Campos had confessed to molesting children; and that Campos had been subjected to private censorship as a result of his confession. Nonetheless, even with knowledge of Campos' past sexual abuse of children, La Jolla and Watchtower repeatedly promoted Campos. First, to the position of Ministerial Servant and then to the positions of Elder and Congregation Secretary. Finally, when a direct written complaint was made regarding the molestation of John Dorman by Campos, La Jolla defended its position to allow Campos to become a Ministerial Servant and allowed him to continue to serve as an Elder, Pioneer and Congregation Secretary until a later complaint was received. (PE 5, March 29, 1995 letter.) By acting in this manner, La Jolla ratified Campos' sexual abuse of children.

3. Watchtower Ratified Campos' Molestation of Children

Apart from acting to ratify Campos' molestation of children through its agents, the Elders of La Jolla and Linda Vista, Watchtower ratified Campos' conduct by appointing Campos as a Ministerial Servant and Elder of La Jolla after gaining knowledge of his earlier abuse of children. Watchtower also ratified Campos' molestation of children by sitting on the Dorman letter of complaint for nearly two months before forwarding the letter to La Jolla, and then allowing La Jolla to take nine months to respond to the accusations. (PE _15, April 13, 1994 letter; PE 16, June 9, 1994 letter; PE 5, March 29, 1995 letter.) Finally, Watchtower ratified Campos' abuse of children by knowingly permitting Campos to continue to serve as an Elder, Pioneer and the Secretary of La Jolla even after receiving written notice of Campos' abuse of John Dorman and one other child.

C. Each of the Defendants were guilty of fraud, oppression and malice

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

Each Defendant was aware of the frequent and repeated sexual abuse of children inflicted by Campos, but continued to hold him out as a competent agent who could be trusted with the temporary care and custody of children of the various congregations with which he was associated, including Plaintiffs. Defendants knew that Campos posed a substantial risk to minor children. Defendants repeatedly allowed Campos to have further contact with young children, and acted in conscious disregard for the rights and safety of minor children, which resulted in the sexual abuse of Plaintiffs. Defendants' actions in covering up the criminal acts of a serial

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[8] 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.

pedophile like Campos were despicable. Decent ordinary people would look down upon and despise the Defendants' contemptible decision to cover up sexual abuse, to allow Campos to continue to sexually abuse young children, and to purposefully decline to warn congregants of the danger he posed. The result of Defendants' conduct was that several children were needlessly subjected to Campos, and were sexually molested as a result.

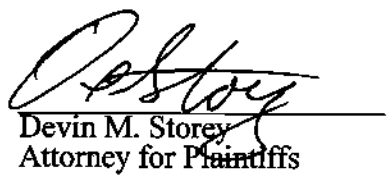
V. CONCLUSION

Plaintiffs have met their burden by presenting sufficient evidence to permit their claims for punitive damages to go to a jury. Plaintiffs have produced ample facts to demonstrate that a reasonable jury find that Defendants had knowledge of Campos' past sexual abuse of children and acted with conscious disregard for the rights and safety of others by continuing to place Campos in positions of authority with access to children, and without providing warnings of the dangers Campos posed. As a result, this Court should grant Plaintiffs' Motion to Amend to Add a Claim for Punitive Damages and permit Plaintiffs to file the proposed Third Amended Complaint attached as Plaintiffs' Exhibit 22.

Respectfully submitted,

THE ZALKIN LAW FIRM, P.C.

Dated: 11-7-11



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