

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

A136641

HG11558324

JANE DOE

Plaintiff and Respondent.

v.

WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC.

Defendant and Appellant,

Appeal from the Superior Court of Alameda County
The Honorable Robert McGuinness, Judge

**APPLICATION TO FILE AN APPELLANT'S OPENING BRIEF
IN EXCESS OF WORD COUNT LIMIT; DECLARATION OF
JON R. WILLIAMS IN SUPPORT THEREOF; PROPOSED ORDER
[RULE OF COURT 8.204(c)(5)]**

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TRACT SOCIETY OF
NEW YORK, INC.,**
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**WATCHTOWER BIBLE & TRACT SOCIETY
OF NEW YORK, INC.**

APPLICATION

Pursuant to Rule of Court 8.204, subd. (c)(5), Defendant and Appellant, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. (“Watchtower”), hereby respectfully asks permission to file an Appellant’s Opening Brief exceeding the length limit otherwise prescribed by Rule 8.204, subd. (c)(1).

As set forth in greater detail in the accompanying declaration of Jon R. Williams, this consolidated appeal presents a complicated factual and procedural history (arising from a multi-week trial before the lower court), and encompasses a substantial legal issue of first impression: *whether a religious organization has a “special relationship” with its rank-and-file members sufficient to impose a duty to warn and to protect those members from the criminal acts of other rank-and-file members.* That duty issue was consistently briefed at several critical stages of the underlying case, and permeated the lower court’s jury instructions, Special Verdict, and ultimate Judgment at issue in this case.

Watchtower has made a concerted effort to coordinate its discussion of that duty issue in a way that avoids needless repetition with a similar duty challenge raised by Co-Appellant and Defendant, NORTH FREEMONT CONGREGATION OF JEHOVAH’S WITNESSES (“Freemont Congregation”), and in doing so has substantially reduced the length of its argument in its Opening Brief. Nevertheless, as that duty issue, as well as other substantive

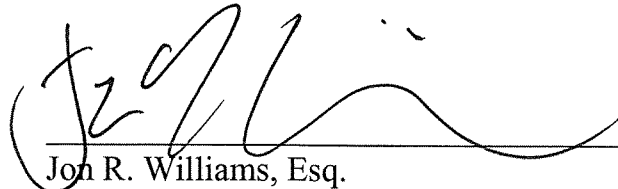
challenges Watchtower raises to the trial court's Special Verdict form, instructions to the jury, and award of punitive damages, required detailed treatment in that Opening Brief in order to accurately and fully advance those challenges and to assist the Court, Watchtower respectfully seeks to submit to this Court an Appellants' Opening Brief of **15,352 words**, including footnotes.

Respectfully submitted,

**WATCHTOWER BIBLE & TRACT
SOCIETY OF NEW YORK, INC.,
LEGAL DEPARTMENT**
Mario F. Moreno, Esq.
(Pro Hac Vice Pending)

BOUDREAU WILLIAMS LLP

Date: 03/26/13

A handwritten signature in black ink, appearing to read 'Jon R. Williams', is written over a horizontal line. The signature is fluid and cursive.

Jon R. Williams, Esq.
Attorneys for Defendant/Appellant
**WATCHTOWER BIBLE & TRACT
SOCIETY OF NEW YORK, INC.**

DECLARATION

I, JON R. WILLIAMS, declare:

1. I am an attorney at law duly admitted to practice before this Court, and am a partner in the law firm of Boudreau Williams LLP. I am a Certified Appellate Specialist (California State Bar Board of Specialization), appellate counsel of record for Defendant and Appellant, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. (“Watchtower”), and the attorney primarily responsible for representing Watchtower before this Court.

2. *Relevant Procedural History of These Consolidated Appeals:* The underlying Judgment at issue in this case was rendered against both Watchtower (the national organization of Jehovah’s Witnesses) and a local congregation, the NORTH FREEMONT CONGREGATION OF JEHOVAH’S WITNESSES (“Freemont Congregation”). While those two Defendants shared the same trial counsel in the lower court, they are separately represented on appeal by different counsel before this Court. Nevertheless, those two appeals have proceeded together before this Court, with both Watchtower and the Freemont Congregation filing their own respective Appellant’s Opening Briefs, challenging various components of the trial court’s Judgment.

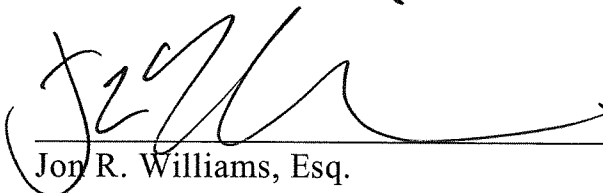
3. *Diligence and Good Cause:* Notwithstanding that these appeals are consolidated, I diligently attempted to draft an Appellant’s Opening Brief on Watchtower’s behalf within the usual word court limits established by Rule 8.204,

subd. (c)(1). This included over seven separate drafts of that brief, each of which I trimmed down substantially with input from Watchtower's General Counsel and legal staff. This also included substantial coordination with the Freemont Congregation's appellate counsel, including a concerted effort to avoid duplication whenever possible, and to reciprocally join (per Rule of Court 8.200, subd. (a)(5)) in the arguments made in those respective Opening Briefs. That level of coordination also led to both Watchtower and the Freemont Congregation submitting in support of those briefs and Joint Appellants' Appendix, all with an eye toward streamlining our presentation to the Court on behalf of our clients. Yet given the number of substantive challenges Watchtower raises from the trial court's pre-trial and post-judgment rulings, as well as from the trial court's Judgment, I was not able to reduce the word count below the 14,000 word threshold. This is due also, at least in part, to the relative size of the trial court record, with a Reporter's Transcript consisting of 13 volumes and spanning 1,281 pages, and an Appellants' Appendix consisting of 8 volumes and 2,071 pages. Further complicating this task was the critical and novel duty issue which permeates both appeals, but from slightly different perspectives, as well as Watchtower's challenge to the amount of the punitive damages awarded against it alone, requiring additional briefing and analysis to assist the Court in deciding that issue. In short, despite considerable efforts, I was unable to bring this brief down in length any more than **15,352 words**, which is only 1,352 words over the word count limited provided by Rule 8.204, subd. (c)(1). Indeed, I make it my practice – even on complicated

matters such as this one – to avoid filing overlength briefs with this or any other Court or Appeal, and rarely do so. However, this case justifies an exception, given the interrelated importance of the factual, procedural, and legal elements of the arguments Watchtower raises, all of which need to be thoroughly and accurately briefed to this Court in order to responsibly advance Watchtower’s interests on appeal.

4. *Good Faith and Lack of Prejudice:* This Application is made in good faith for the reasons stated here and not for any other purpose. Furthermore, I know of no prejudice that will result to any party from grant of this Application, especially where the Plaintiff/Respondent, JANE DOE, will be able to seek similar relief, if needed, to respond to the two separate Opening Briefs filed in this appeal by Watchtower and the Fremont Congregation. However, significant prejudice will likely result to Watchtower if this Application is denied, in light of the complexity of the facts, procedure, and law which must be accurately summarized and briefed, and given the multiple core issues which have been squared for this Court’s determination in this appeal.

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on March 26, 2013, at San Diego, California.


Jon R. Williams, Esq.

ORDER

Based on the application of Defendant and Appellant, WATCHTOWER BIBLE & TRACT SOCIETY OF NEW YORK, INC. (“Watchtower”), and good cause appearing;

IT IS ORDERED THAT:

Pursuant to Rule of Court 8.204, subd. (c)(5), Watchtower may file with this Court an Appellant’s Opening Brief of **15,352 words**, including footnotes.

Dated: _____

Presiding Justice

Jane Doe v. The Watchtower Bible and Tract Society of New York Inc. et al.
Court of Appeal of the State of California
First Appellate District, Division Three
Court of Appeal Case No.: A136641
Alameda County Superior Court Case No.: HG11558324

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

I am employed in the county of San Diego, State of California. I am over the age of 18 and not a party to the within action; my business address is 666 State Street, San Diego, California 92101.

On **March 26, 2013**, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

- 1) **APPLICATION TO FILE AN APPELLANT'S OPENING BRIEF IN EXCESS OF WORD COUNT LIMIT; DECLARATION OF JON R. WILLIAMS IN SUPPORT THEREOF; PROPOSED ORDER**

In a sealed envelope, postage fully paid, addressed as follows:

Richard J. Simons, Esq. Kelly I. Kraetsch, Esq. Furtado Jaspovice & Simons 6589 Bellhurst Lane Castro Valley, CA 94552	<i>Attorney(s) for Plaintiff and Respondent: Jane Doe</i>
James M. McCabe, Esq. The McCabe Law Firm, APC 4817 Santa Monica Avenue, Suite B San Diego, CA 92107	<i>Attorney(s) for Defendant and Appellant: Fremont California Congregation of Jehovah's Witnesses, North Unit</i>

On the above date:

 X (BY U.S. MAIL/ EXPRESS MAIL) The sealed envelope with postage thereon fully prepaid was placed for collection and mailing following ordinary business practices. I am aware that on motion of the party served, service is presumed invalid if the postage cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing set forth in this declaration. I am readily familiar with Boudreau Williams LLP's practice for collection and processing of documents for mailing with the United States Postal Service and that the documents are deposited with the United States Postal Service the same day as the day of collection in the ordinary course of business.

 (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized

by the express carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

____ (BY FACSIMILE TRANSMISSION) On _____, at San Diego, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was 619-231-8181; see attached Service List for a list of the telephone number(s) of the receiving facsimile number(s). A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error.

____ (BY PERSONAL DELIVERY) by causing a true copy of the within document(s) to be personally hand-delivered by _____ to the attached Service List, on the date set forth above.

____ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the person at the e-mail addresses listed. I did not receive, within a reasonable time after the transmission, any was unsuccessful.

X (STATE ONLY) I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

____ (FEDERAL ONLY) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **March 26, 2013**, at San Diego, California.



Chenin M. Andreoli