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13 SUPERIOR COURT OF CALIFORNIA - COUNTY OF ALAMEDA

14 JANE DOE,

15 Plaintiff,

16 v.

17 THE WATCHTOWER BIBLE AND TRACT SOCIETY
18 OF NEW YORK, INC., a corporation, et al.,

19 Defendants.

No. HG11558324

ASSIGNED FOR ALL PURPOSES TO JUDGE ROBERT
McGUINNESS, DEPARTMENT 22

PLAINTIFF'S SUPPLEMENTAL BRIEFING ON
PUNITIVE DAMAGE ISSUES IN OPPOSITION TO
MOTIONS FOR NEW TRIAL AND J.N.O.V. OF
DEFENDANTS WATCHTOWER NEW YORK AND
FREMONT CONGREGATION

Date: August 13, 2012
Time: 8:30 a.m.
Dept: 22

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1 INTRODUCTION

2 The jury verdict in this case awarded \$130,000.00 in economic damages to Candace Conti,
3 and \$6,870,000.00 in past and future non-economic damages. The jury assessed 27% fault to
4 Watchtower New York, and 13% fault to the North Fremont Congregation. The North Fremont
5 Congregation allocation was based exclusively on the jury's answer to Special Verdict Questions 3
6 and 4, in which they found that Elders Abrahamson and Clarke, each "as an Agent of Watchtower",
7 were negligent and a cause of harm to Plaintiff. The jury's finding of total fault attributed to
8 Watchtower through the combined conduct of its agents in Fremont and those in New York was
9 therefore 40%.

10 The Court has asked for further briefing on specific issues involving the amount of punitive
11 damages permissibly awarded against Watchtower New York, including analysis of the specific issues
12 of the amount of compensatory damages, reprehensibility of Watchtower's conduct, and the
13 appropriate ratios permitted under due process. As demonstrated below, all of the 5 factors relevant
14 to the characterization of the degree of reprehensibility favor plaintiff and are against Watchtower.
15 The Court will properly conclude that the degree of Watchtower's reprehensibility is serious, and their
16 financial condition very strong. An independent due process review of the facts and circumstances of
17 this specific case, through the filter of the many due process decisions, leads to the conclusion that
18 the amount of punitive damages awarded in this case of \$21,000,001.00 is consistent with due
19 process requirements and should be affirmed, whether the ratio is 3:1 as argued by plaintiff, 7.3:1, if
20 the ratio if all of Watchtower's 40% of cumulative fault is considered, or even the extreme 10.4:1 as
21 argued by Watchtower.
22

23 I. THE COURT'S POWER IS TO INDEPENDENTLY REVIEW THE JURY'S VERDICT FOR DUE
24 PROCESS PROTECTION.

25 Punitive damage judgments are independently reviewed by the trial Court as a "thirteenth
26 juror" to determine whether the award was influenced by "passion or prejudice". (*Bankhead v.*
27 *ArvinMeritor, Inc.* (2012) 205 Cal.App.4th 68, at 76) While the Court makes an independent
28 assessment of the reprehensibility of the defendant's conduct and the relationship between the

1 award and harm done to the plaintiff to determine compliance with due process concerns, the
2 express or implied factual findings of the trier of fact must be recognized under the substantial
3 evidence rule. (*Id.* at 85) As expressly acknowledged by the Court in *Bankhead*, *supra*, the Court's
4 obligation to conduct a due process analysis regarding punitive damages does not create an
5 opportunity for the defendant "to make an end run around those factual findings" made by the jury.
6 (*Id.*, at 86). Although the amount of punitive damages is independently reviewed by the Court for
7 constitutional due process compliance, a question of law, the underlying factual findings of the jury,
8 including the finding of malice, are not reviewable if supported by any substantial evidence. (*Gober v.*
9 *Ralph's Grocery Co.* (2006) 137 Cal.App.4th 204, 212) The Court's constitutional mission "is only to
10 find a level higher than which an award *may not go*; it is not to find the "right" level in the Court's own
11 view" (*Simon v. San Paolo US Holding Co, Inc.* (2005) 35 Cal.4th 1159, at 1188) In enforcing federal
12 due process limits, a Court "does not sit as a replacement for the jury, but only as a check on arbitrary
13 awards." (*Id.*).

14 To the extent that the Motions by Watchtower to reduce the punitive damages in this case rely
15 on rearguing factual issues the jury determined against them, including the finding of malice, the
16 arguments are outside the scope of permissible consideration, and are instead the prohibited "end
17 run" which seeks to deprive plaintiff of her constitutional right to jury trial.

18
19 **II. THE COMPENSATORY DAMAGES AWARD WAS NOT PUNITIVE.**

20 **A. No Punishment of Church Defendants.**

21 Plaintiff was awarded \$6,870,000.00 in non-economic damages to compensate her for "past
22 and future physical pain, mental suffering, depression, anxiety, humiliation, and emotional distress."
23 (CACI 3905-A, 6/14/12 Trial Transcript (TT) 71:22-72:1). The Church Defendants did not dispute
24 either the evidence supporting the compensatory damage award, or argue that the numbers were
25 unreasonable or excessive. While the number itself is significant, the facts of this case warrant the
26 award as a result of which it cannot be concluded that a punitive element was included. There was
27 substantial evidence of repeated, serial, horrific sexual abuse by Jonathan Kendrick at the time that
28 Ms. Conti was 9 and 10 years of age. There was substantial evidence of major depression, an anxiety

1 disorder called post traumatic stress disorder (PTSD), both physical pain and mental suffering,
2 substantial and repeated humiliation, and severe and lifelong emotional distress requiring
3 professional care and treatment. The evidence was uncontradicted that these damages were lifetime
4 damages, and were chronic and recurring. Neither evidence concerning compensatory damages, nor
5 the amount requested by plaintiff's counsel in closing argument, was contested by the Church
6 Defendants.

7 The jury was also instructed in CACI 3924, specifically being told "you must not include in your
8 award any damages to punish or make an example of Jonathan Kendrick, Watchtower Bible and Tract
9 Society of New York, Inc., or Fremont Congregation of Jehovah's Witnesses North Unit. You must
10 award only the damages that will fairly compensate Candace Conti for her harm." (CACI 3924, TT
11 72:20-73:2). There is no evidence from which one could reasonably conclude that the jury
12 disregarded the Court's instructions, including this one.

13 Those cases holding a non-economic award to be partly punitive in nature are very different
14 from this case. For example, in *State Farm Mutual Auto Insurance Co. v. Campbell* (2003) 538 U.S.
15 408, the compensatory award of \$1 Million was for a year and a half of emotional distress, arising
16 solely from an economic transaction rather than physical assault or trauma. (538 U.S. at 426) The
17 emotional distress claimed by the Campbells was limited to outrage and humiliation caused by the
18 defendant insurance company's refusal to pay their claim, which was a form of damage duplicative of
19 the punitive damage award. (*ibid.*) In this case, however, there is no duplication of damages. Ms.
20 Conti was not aware of Watchtower's policy or its knowledge of Kendrick's record of previous
21 childhood sexual abuse until over a decade after her own sexual abuse at his hands. Her non-
22 economic damage was lifetime, rather than a year and a half, and involved the worst possible
23 physical injuries of child sex abuse, rather than solely economic damages from the denial of a claim.
24 Ms. Conti experienced her abuse as a child, with no one to comfort her for many years. Her harm
25 came directly from the physical abuse and its emotional consequences, not her anger with or
26 disappointment about watchtower's policies.
27

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1 In *Roby v. McKesson Corp.* (2009) 47 Cal.4th 686, non-economic damages were also deemed
2 to include a “punitive” element. In *Roby*, as in *State Farm*, there was no physical harm, and the
3 award for the three separate claims of the plaintiff overlapped. Unlike Ms. Conti’s case, the award of
4 non-economic damages from the jury exceeded even the amount requested by the plaintiff’s attorney.
5 (47 Cal.4th at 698) *Roby*, unlike Ms. Conti, also experienced her harm as an adult, and was able to
6 obtain prompt therapy and support. Ms. Conti suffered in silence with depression, anxiety, and
7 isolation from self-medicating drug use, for years.

8 The Court’s attention has been drawn to *Bankhead v. ArvinMeritor, Inc.* (2012) 205
9 Cal.App.4th 68. The *Bankhead* Court upheld a 2.4:1 ratio of punitive damages to compensatory
10 damages, while acknowledging that the \$2.5 Million emotional distress award for the plaintiff
11 asbestosis victim and his spouse was “high enough that it appears to include a punitive component.”
12 (205 Cal.App.4th at 90) Although the Court did not explain why it reached this conclusion, presumably
13 it was influenced by the fact that the period of time from the onset of the symptoms to the death of
14 the plaintiff asbestosis victim was less than three years. Medical care and family support were all
15 available throughout the illness. In Ms. Conti’s case, the injury occurred over a prolonged period of
16 time beginning in early childhood and the harm she has experienced will last her lifetime. The
17 uncontradicted testimony of Ms. Conti’s LCSW during her pre-teen years, Laura Fraser, was that no
18 support system or safety net was available for Candace Conti during the critical years she was
19 experiencing the abuse, and in the years thereafter. Neither case involved the type of harm any
20 rational person would suffer for any amount of money, but the many additional years of suffering, and
21 the harm’s origin is sexual abuse of a vulnerable child rather than the terminal medical condition of
22 an adult, certainly must be recognized before a court attributes a punitive motive to the
23 compensatory damages awarded Candace Conti.
24

25 In *Walker v. Farmers Insurance Exchange* (2007) 153 Cal.App.4th 965, the trial court found
26 that \$750,000.00 in emotional distress damages included a punitive element, and the Court of
27 Appeal agreed. (153 Cal.App.4th at 974) In *Walker*, as in *State Farm* and *Roby*, there was no direct
28 physical injury. The injury was transitory in nature, and all of the economic damages – including

1 attorney's fees – were recouped in a relatively short period of time. The sole injury in *Walker* was the
2 insurer's failure to defend a lawsuit, causing the insured to pay \$6,500.00 in a settlement prior to
3 prevailing in their case against the insurer.

4 The basis of these cases is clear – a non-economic award may be deemed to include a
5 punitive element when it is extremely large when measured against the type of harm, the duration of
6 that harm, and the evidence and argument presented in support of the award. A “substantial”
7 compensatory award cannot be deemed to be punitive in isolation, but rather by comparing the
8 number to the actual physical and mental injury, the certainty that the injury occurred, and the impact
9 of that injury on the plaintiff's life. In a society that pays \$6.87 Million and much more to a
10 professional athlete for one season of playing a sport, the same amount for the undisputed non-
11 economic consequences of serial child sex abuse of a 9 and 10 year old, with suffering over a
12 lifetime, is not “punitive”. The undisputed and uncontradicted compensatory damages were properly
13 awarded pursuant to the Court's instruction.

14 **B. No Punishment of Mr. Kendrick.**

15 In oral argument of this Motion, the Court expressed some concern that the compensatory
16 damages may have included a punitive element to punish Mr. Kendrick. However, through defense
17 Ex. 135, defense cross-examination, and extensive defense argument, as well as concurrence by
18 plaintiff's counsel, the jury was repeatedly advised that Mr. Kendrick would not be paying any
19 judgment rendered against him, that he had entered into a restraining order agreement in exchange
20 for a Covenant Not to Execute, and that his punishment would come through the criminal system as
21 the Fremont Police Department was now involved in an active investigation of Mr. Conti's
22 molestation. The jury was fully and repeatedly advised and informed that Mr. Kendrick would not be
23 paying any compensatory damage award, and therefore had no reason to “punish” him through the
24 compensatory damages finding.

25 The Court also expressed concern over the use of the word “monster”. However, the
26 transcript is abundantly clear: neither plaintiff nor her attorney ever called Mr. Kendrick a monster.
27 Defense counsel were the only persons in the courtroom to do so, to further their own purpose of
28

1 shifting the allocation of fault to Mr. Kendrick and away from themselves. There was never any
2 expression by any witness or argument by counsel to suggest Mr. Kendrick should be punished in the
3 compensatory award because he was a “monster”.

4 The trial transcript reflects that Candace Conti used the word “monster” one time in direct
5 examination, when she testified as follows:

6 “Q. And what was it about Jonathan Kendrick that you were scared
7 of?

8 A. He seemed like a monster.” (TT 6/4/12, 100:9-11).

9 Mr. McCabe used the word twice in his questions and cross-examination (Id., 118:19; 119:4),
10 but Ms. Conti did not use the word again. Of the three total uses of the word “monster” during the
11 evidence phase of the trial, Mr. McCabe used the word twice. There was no further use of the word
12 until closing argument, when plaintiff’s counsel described Candace Conti’s nightmares as “that
13 feeling and reliving that experience of being crushed by this monster”, referring to her feelings rather
14 than directly calling Mr. Kendrick a name. Mr. McCabe called Kendrick a “monster” ten times during
15 his closing argument and Mr. Schnack did so once. Of the total of 15 times the word “monster” was
16 mentioned, 13 were by defense counsel. This does not in any way suggest the compensatory
17 damage award was enlarged to punish Mr. Kendrick.

18 A large compensatory damage award, including emotional distress damage, is not only
19 appropriate, but required where the plaintiff has suffered a substantial, lifelong, and very real injury,
20 particularly where the extent and amount of emotional distress damages were not contested. In this
21 case the facts show the compensatory damages were truly compensatory, and not punitive. To hold
22 this emotional distress award as a limiting factor in the ratio of punitive damages analysis is to
23 discriminate against and punish Ms. Conti because she was sexually abused as a vulnerable child,
24 and reward the defendants whose conduct and malice made it all possible. Such a result would
25 discriminate against Ms. Conti under the supposed goal of reviewing a punitive damage judgment to
26 provide conformity with due process. This is not the purpose of a due process review.

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1 **III. NEITHER THE AMOUNT OF COMPENSATORY DAMAGES NOR DUE PROCESS REQUIRES**
2 **DISTURBING THE RATIO OF PUNITIVE DAMAGES UNDER THE FACTS OF THIS CASE.**

3 **A. Permissible Ratios**

4 Courts have uniformly recognized that a reasonable ratio between punitive damages and
5 compensatory damages must exist to comply with due process requirements. However, these same
6 Courts have uniformly recognized that ratio alone does not answer the question of due process, and
7 that double digit ratios may, under the circumstances of an individual case, be entirely consistent
8 with due process. For example, in *Simon v. San Paolo US Holding Company, Inc.* (2005) 35 Cal.4th
9 1159, a 10:1 ratio was found to be constitutional, even where the reprehensibility of the defendant's
10 conduct was low. (35 Cal.4th at 1189) The *Simon* Court opined that higher ratios may be more
11 appropriate when only economic damages were suffered by the plaintiff. It held that a 10:1 ratio
12 appropriate in that case, specifically rejecting the argument that the outer constitutional limit of
13 punitive damages is a maximum of 4 times compensatory damages. (35 Cal.4th at 1182-3, overruling
14 *Diamond Woodworks, Inc. v. Argonaut Insurance Co.* (2003) 109 Cal.App.4th 1020)

15 The appropriate ratio requires a consideration of the degree of reprehensibility of the
16 defendant's misconduct, the disparity between actual harm and punitive damages, and in an
17 appropriate case, the difference between punitive damages awarded by the jury and civil penalties.
18 (*State Farm Mutual Auto Insurance Co. v. Campbell* (2003) 538 U.S. 408, at 418) It is generally
19 recognized in civil tort cases that the third category of civil penalty analogy is irrelevant. (*Bankhead v.*
20 *ArvinMeritor, Inc.*, supra, 205 Cal.App.4th at 85, Fn.10) In cases involving sexual abuse, awards with
21 extremely large ratios of punitive to compensatory damages have been approved as consistent with
22 due process. For example, in *Weeks v. Baker and McKenzie* (1998) 63 Cal.App.4th 1128, at 1166-
23 67, the repeated sexual abuse of an employee was an adequate basis for a 70:1 ratio for punitive
24 damages. The *Weeks* holding was recognized recently in *Roby v. McKesson Corp.*, supra, 47 Cal.4th
25 at 717.

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B. Reprehensibility.

All of the many punitive damage Due Process cases agree that the single most critical factor in determining what amount and ratio of punitive damages due process allows is the degree of reprehensibility of the conduct constituting malice. The jury was instructed on this issue by CACI 3949 as modified and agreed to by all parties. Four factors of reprehensibility were provided to the jury: (1) whether the conduct caused physical harm; (2) whether the defendant disregarded the health or safety of others; (3) whether the defendant's conduct involved a pattern of practice; and (4) whether the defendant acted with trickery or deceit. (TT 6/14/12, 8:24-9:6).

The first factor in the reprehensibility analysis is whether or not the plaintiff suffered physical harm as opposed to merely economic damage. The answer in this case is not only yes, it is an emphatic yes. The plaintiff suffered repetitive, invasive, terrifying sexual abuse over a sustained period of time during which she was 9 and 10 years old.

The second factor is whether or not the defendant acted with reckless disregard of Candace Conti's health and safety. The jury found Watchtower's managing agents did so in this case by allowing her to be exposed to the known child molester Kendrick while in Congregation activities. The evidence from Awake Magazine showed that Watchtower knew that individuals who had sexually molested a child in the past were likely to do so again; Watchtower knew such criminals could be trusted or popular members of the Congregation who would not be obvious to other Congregation members; that Watchtower knew "hush hush" and secrecy about abusers within the Congregations protected abusers rather than victims; Watchtower knew that secrecy about sexual abusers in the midst of the Congregations promoted further abuse; and Watchtower knew the effects of abuse on children were devastating. (Awake Magazine, Trial Ex. 64/Def. 37, Oct. 8, 1993). Watchtower also knew that the official hierarchy's policy of secrecy is why child sex abusers were allowed to roam free in the Catholic Church (*Ibid.*). Knowing all of this, Watchtower followed its corporate policy of secrecy anyway, instructing the North Fremont Congregation Elders to keep Jonathan Kendrick's sexual abuse secret from the parents in the Congregation, and sabotaging the parental "first line of defense" for protection of Congregation children from abuse. The instructions included following the 1989 policy

1 of keeping confirmed child sexual abusers secret, even when the victims did not want the matter kept
2 private, and the perpetrator was criminally convicted. The Watchtower's intentional and reckless
3 disregard of Candace Conti's health and safety factor in this case also supports a finding of
4 reprehensibility.

5 The third factor is whether or not the conduct was an isolated incident, or a pattern and
6 practice. Although no evidence of harm to other victims or other cases of secrecy were presented to
7 the jury, plaintiff Conti proved the Watchtower's managing agents had adopted a business practice
8 and policy of keeping known sex abusers secret from parents in the Congregation, and it instructed
9 the Fremont Elders to do so in this case. As stated in *Johnson v. Ford Motor Co.* (2005) 35 Cal.4th
10 1191, "by placing the defendant's conduct on one occasion into the context of a business practice or
11 policy, an individual plaintiff can demonstrate that the conduct toward him or her was more
12 blameworthy and warrants a stronger penalty to deter continued or repeated conduct of the same
13 nature." (35 Cal.4th at 1206-7 and Fn.6). It was indeed the business policy of Watchtower to keep
14 sexual abusers secret, allowing them to mingle freely within the Watchtower Congregations, and
15 following that policy allowed Jonathan Kendrick to molest a second girl in the North Fremont
16 Congregation. This factor also supports the finding of reprehensibility.

17 The last factor provided to the jury was whether or not the "defendant's conduct was
18 intentional", or whether the conduct resulted from a "mere accident". In Ms. Conti's case, there was
19 no mere accident. The Watchtower decision to keep secret the risk that Jonathan Kendrick
20 presented to children in the North Fremont Congregation, and to keep secret from the parents in the
21 Congregation the knowledge that there was a known child abuser among their fellow "brothers and
22 sisters" was the result of a national policy promulgated and enforced by Watchtower's New York
23 office. This policy and conduct is consistent with a "corporate culture that encouraged such
24 supervisory conduct", rather than the "isolated actions of a single supervisor combined with the
25 onetime failure on the part of the employer". (*Roby v. McKesson Corp.*, supra, 47 Cal.4th at 715-16)
26 As noted in *Johnson*, supra, the business policy of Watchtower is relevant, and does establish a
27

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1 corporate policy rather than an isolated incident or low level conduct. This factor of reprehensibility
2 also favors plaintiff and her claim for punitive damages.

3 The issue of financial vulnerability, which appears in the CACI instruction, was not provided to
4 the jury by stipulation of the parties. However, in the Court's independent due process review of
5 damages, it is appropriate to consider vulnerability to physical harm. (*Bullock v. Philip Morris USA,*
6 *Inc.*, supra, 198 Cal.App.4th at 562) The *Bullock* Court stated that "we have no trouble concluding,
7 however, that in a case involving physical harm, the physical or physiological vulnerability of the target
8 of the defendant's conduct is an appropriate factor to consider in determining the degree of
9 reprehensibility..." (*Ibid*). Plaintiff Candace Conti, as a 9 and 10 year old from a dysfunctional family
10 whose mother was "unable to even care for herself" and whose father was distracted and oblivious to
11 the real nature of his "friend" and fellow Jehovah's Witness Congregation member Jonathan
12 Kendrick, was particularly vulnerable to abuse. Her childhood LLSW, Dr. Fraser, so testified, and her
13 testimony was uncontradicted. This factor of reprehensibility also favors plaintiff.

14 All five of the reprehensibility factors favor the imposition of punitive damages. It has been
15 recognized that, where all of the reprehensibility factors are in favor of the plaintiff, the
16 reprehensibility can be considered "extreme". (*Bullock*, supra, 198 Cal.App.4th at 563) In this case,
17 the reprehensibility of Watchtower's conduct can fairly be stated to be, at the very least, "serious".
18

19 C. The Ratio is Proper.

20 1. The Base Number.

21 Watchtower argues that *Bankhead v. ArvinMeritor, Inc.* is controlling, and that in that case the
22 Appellate Court found that "this Court is required to use the net compensatory damages" in
23 determining the issue of ratio. However, the *Bankhead* Court did not so hold. The parties in
24 *Bankhead* Court did not brief, argue, or dispute the point. Instead, the *Bankhead* parties agreed that
25 the 2.4:1 ratio of punitive damages to the defendant's share of compensatory damages was the
26 measure used, and the Court of Appeal only incorporated that agreement in affirming that ratio. The
27 Court's conclusion that the assignment of a low percentage of liability reduces the amount of
28 compensatory damages with which the punitive damage amount is compared cited no authority and

1 did no analysis. The Court's dicta was not necessary to its decision. (205 Cal.App.4th at 87, and at
2 90). An Appellate Court decision is not authority for a proposition that it did not consider, and which
3 was not essential to its determination of the issues. (*Richmond v. Shasta Community Services District*
4 (2004) 32 Cal.4th 409, 422)

5 The correct base number against which punitive awards must be measured is "the actual or
6 potential harm suffered by the plaintiff." (*State Farm, supra.*, 538 U. S. at 418) This is a fair
7 measure, as it reflects the jury's finding that the Watchtower's conduct was a substantial factor in
8 causing her harm, and one without which the harm would not have occurred. (CACI 430 TT 6/11
9 61:19-21) No case has yet been cited which holds or decides to the contrary.

10 However, in the event the Court determines that the amount of damages attributable to
11 watchtower alone after a reduction for Kendrick's share of fault, the correct number is
12 \$2,870,000.00, or 40% of the non-economic damages and the \$130,000.00 in economic damages.
13 All of that 40% of fault is attributable to Watchtower, carrying out its corporate policies through its
14 agents. The Special Verdict specifically found that the North Fremont Congregation Elders were
15 agents of Watchtower, and the matter was also admitted at trial. Therefore, the minimal comparison
16 of punitive damages to compensatory damages in the jury's present award is the ratio of 7.3:1, not
17 the 10:1 that Watchtower argues.

18
19 2. The Issue of Net Worth.

20 Defendant has not raised the issue of its wealth as part of the review of the award, but the
21 Court is required to consider the defendant's wealth as one of the three criteria for its review.
22 (*Bankhead, supra*, 205 Cal.App.4th 68 at 77). As recognized in *Bankhead* and many other cases, "the
23 wealthier the wrongdoer, the larger the award of punitive damages." (*Bankhead, supra*, 205
24 Cal.App.4th at 77, citing *Downey Savings & Loan Assoc. v. Ohio Casualty Insurance Co.* (1987) 189
25 Cal.App.3rd 1072, 1099-1100)

26 In this case, Watchtower admitted to having over \$1 Billion in assets and had \$30 Million
27 cash on hand as well. The punitive damage award of \$21,000,001.00 constitutes only 2% of the
28 wealth of defendant placed in evidence. Defendant did not introduce any evidence or make any

1 argument that the punitive damage award would in any way interfere with its operations, solvency, or
2 destroy its business. In order to accomplish the purpose of punitive damages, the extensive holdings
3 and wealth of Watchtower must be considered.

4 3. All of the Numbers are Proper.

5 Whichever numbers are utilized in the due process analysis, the award of \$21,000,001.00 in
6 punitive damages is proper, appropriate, and consistent with due process concerns. High ratios in
7 cases involving sexual abuse have been upheld in the past, including as high as 70:1. (*Weeks v.*
8 *Baker and McKenzie* (1998) 63 Cal.App.4th 1128, cited with approval in *Roby v. McKesson Corp.*,
9 supra, 47 Cal.4th at 717). The *Weeks* case involved repeated sexual harassment of an employee by a
10 partner in the defendant's law firm. None of the physical touching was under the clothing. (63
11 Cal.App.4th at 1138-1144). The Court concluded that

12 "Applying the relevant criteria here, we cannot conclude that the award of punitive
13 damages was excessive. To be sure, the amount awarded was 70 times greater than
14 the compensatory damage award. In *Neo v. Farmers Exchange*, however, the Court
15 upheld a punitive damage award that was 74 times greater than the amount of
16 compensatory damages awarded." (63 Cal.App.4th at 1166).

17 In *Gober v. Ralph's Grocery Co.*, supra, the Court found the reprehensibility to be "modest".
18 (137 Cal.App.4th at 222) The reprehensibility factors in *Gober* were much less in favor of the award of
19 punitive damages than in the *Conti* case, as there was no personal injury involved in *Gober*, and the
20 sexual harassment in that case did not present a "substantial threat to the health and safety" of the
21 plaintiffs. (137 Cal.App.4th at 222) Based upon the "modest" degree of reprehensibility, the Court of
22 Appeal held that an award of a 6:1 ratio of punitive damages was the constitutional maximum.

23 In this case, the reprehensibility factors are Serious- more substantial than in many of those
24 cases, such as *Simon* (low) and *Gober* (moderate), both of which awarded large ratios of punitive
25 damages. In this case, the wealth of Watchtower is extensive, far beyond the ability of one punitive
26 damage award to substantially affect their business operations. In this case, there is not a shred of
27 evidence of contrition or remorse. In this case, the degree of harm suffered by this plaintiff
28 enormous, certain, and uncontested. Taking into account all of the facts and circumstances of this


1 individual case, the punitive damage award ratio is not excessive, regardless of the manner in which
2 it is calculated. The jury's award should remain undisturbed.

3 **CONCLUSION**

4 Plaintiff Candace Conti was compensated for her harm by the jury's damage award, but the
5 public interest in punishing despicable conduct is not served by that award alone. A review of the
6 serious reprehensibility of Watchtower's conduct, its financial wealth, and the extreme repercussions
7 to the health and safety of a vulnerable child, all support a jury's determination that \$21,000,001.00
8 was a rational and reasonable amount to award to serve the purposes of punishment and deterrence
9 in this case.

10 Dated: August 16, 2012

FURTADO, JASPOVICE & SIMONS
A Law Corporation

11
12
13 By 
14 RICHARD J. SIMONS
15 Attorneys for Plaintiff
16 JANE DOE
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28

1 PROOF OF SERVICE (C.C.P. 1013a 2015.5)

2 STATE OF CALIFORNIA ss.
3 COUNTY OF ALAMEDA

4 I am a citizen of the United States and reside in Alameda County; I am over the age of eighteen years
5 and not a party to the within entitled action; my business address is 22274 Main Street, Hayward, California
6 94541.

7 On August 17, 2012, I served the within **PLAINTIFF'S SUPPLEMENTAL BRIEFING ON PUNITIVE DAMAGE**
8 **ISSUES IN OPPOSITION TO MOTIONS FOR NEW TRIAL AND J.N.O.V. OF DEFENDANTS WATCHTOWER NEW YORK**
9 **AND FREMONT CONGREGATION** on interested parties in said action by the following means:

10 By First Class Mail By placing a true copy thereof enclosed in a sealed envelope with
11 postage thereon, fully prepaid, for collection and mailing following the firm's ordinary business practice for
12 deposit in the United States mail in Hayward, California, addressed as shown below:

13 Jonathan Kendrick, In Pro Per
14 200 Honey Lane
15 Oakley, CA 94561
16 925/679-0411 Telephone

17 By Hand-Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be delivered
18 by hand to the address(es) shown below:

19 By Overnight Delivery By causing a true copy thereof, enclosed in a sealed envelope, to be
20 delivered by hand to the address(es) shown below:

21 By Facsimile Transmission - By transmitting a true copy thereof by facsimile transmission from
22 facsimile number (510) 582-8254 to the interested parties to said action at the facsimile number(s) shown
23 below. The facsimile transmission was reported as complete and without error.

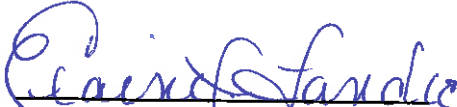
24 By Email By transmitting a true copy thereof to the email address(es) shown below:

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WATCHTOWER BIBLE AND TRACT SOCIETY
OF NEW YORK, INC.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August 17, 2012, at Hayward, California.


ELAINE T. LANDRO