

1 Rocky K. Copley, SBN 101628
Law Office of Rocky K. Copley
2 225 Broadway, Suite 2100
San Diego, California 92101
3 (619) 232-3131

4 Attorneys for Doe 2, Linda Vista Spanish
Congregation of Jehovah's Witnesses
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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO, CENTRAL DIVISION**

10 JOHN DORMAN, individually; and JOEL
GAMBOA, individually,

11 Plaintiff,

12 v.

13 DEFENDANT DOE 1, LA JOLLA CHURCH;
14 DEFENDANT DOE 2, LINDA VISTA
CHURCH; DEFENDANT DOE 3,
15 SUPERVISORY ORGANIZATION;
DEFENDANT DOE 4, PERPETRATOR; and
16 DOES 5 through 100,

17 Defendants.

CASE NO. 37-2010-00092450-CU-PO-CTL

DEFENDANT LINDA VISTA SPANISH
CONGREGATION'S REPLY IN SUPPORT
OF MOTION FOR SUMMARY JUDGMENT
AND/OR SUMMARY ADJUDICATION OF
ISSUES

Date: December 16, 2011
Time: 10:30 a.m.
Dept: C-73
Judge: Hon. Steven R. Denton

Trial Date: April 20, 2012
Complaint Filed: May 20, 2010

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I PLAINTIFFS PROVIDE NO LEGAL AUTHORITY OR FACTS TO ESTABLISH A LEGAL DUTY OWED BY LINDA VISTA SPANISH CONGREGATION TO THE PLAINTIFFS TO PREVENT THE ABUSE, SUPERVISE OR CONTROL CAMPOS OR WARN DORMAN OR GAMBOA OF THE POTENTIAL FOR HARM 1

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1 Defendant Linda Vista Spanish Congregation ("Linda Vista") submits the following reply
2 in support of its motion for summary judgment and/or summary adjudication of issues:

3 I

4 **PLAINTIFFS PROVIDE NO LEGAL AUTHORITY OR FACTS TO ESTABLISH A**
5 **LEGAL DUTY OWED BY LINDA VISTA SPANISH CONGREGATION TO THE**
6 **PLAINTIFFS TO PREVENT THE ABUSE, SUPERVISE OR CONTROL CAMPOS OR**
7 **WARN DORMAN OR GAMBOA OF THE POTENTIAL FOR HARM**

8 1. Plaintiffs Concede No Special Relationship Existed between Linda Vista Spanish
9 Congregation and Plaintiffs

10 California has held that a party cannot be held liable for mere nonfeasance, such as not
11 protecting another from criminal attack by a third party, absent a "special relationship." (*Eric J. v.*
12 *Betty M.* (1999) 76 Cal.App.4th 715, 727) Furthermore, "as a basic general principle, in the
13 absence of a special relationship or circumstance, a private person has no duty to protect another
14 from a criminal attack by a third person." (*Id.*) This basic concept is often referred to as a "no
15 duty to aide rule" which remains a fundamental and long-standing rule of tort law in California."
16 (*Id.*) "As a rule, one has no duty to come to the aid of another. A person who has not created a
17 peril is not liable in tort merely for failure to take affirmative action to assist or protect another
18 unless there is some relationship between them which gives rise to a duty to act." (*Williams v.*
19 *State of California* (1983) 34 Cal.3d 18, 23) California tort law does not impose mandatory good
20 samaritanism. (*Eric J. v. Betty M., supra*, 76 Cal.App.4th at pages 727-728)

21 Special relationships giving rise to a legal duty of care have been found to exist between
22 common carrier and passenger, innkeeper and guest, landowner and invitee, custodian and ward.
23 (Rest.2d Torts § 314A) Dorman and Gamboa do not contend in their oppositions that a special
24 relationship existed between Linda Vista and the plaintiffs. Plaintiffs instead contend that a
25 special relationship existed between Campos and Linda Vista that imposed a legal duty of care
26 upon Linda Vista to protect third parties (i.e., the plaintiffs) from his conduct.

27 Plaintiffs contend the legal duty of care arises from some type of agency relationship that
28 would require Linda Vista to prevent this harm by controlling Campos, warning the plaintiffs, or
taking other type of action to protect the plaintiffs. However, the legal authorities relied upon for

1 such duties arise from an employer/employee or agency/principal relationship where the
2 employment or agency was somehow involved in creating the risk of harm. For the reasons
3 explained in Section II, no such agency/principal or employer/ employee situation had any legal
4 nexus to the plaintiffs' harm. Therefore, no legal duty arose or was breached even if an
5 agency/principal relationship existed between Campos and Linda Vista.

6 2. No Duty to Warn or Control Campos so No Legal Duty was Owed to the Plaintiffs.

7 Plaintiffs contend that Linda Vista was aware that Campos had molested a boy (John Doe)
8 prior to Droman and Gamboa and therefore owed a duty of care to Dorman and Gamboa. That is
9 not the law.

10 In *Eric J. v. Betty M.* (1999) 76 Cal.App.4th 715, the court faced a situation where a
11 defendant (Robert) was released from prison after being convicted of felony child molestation four
12 years earlier. He resided temporarily with his family members. Robert dated Helen who had an 8
13 year old boy named Eric. Robert's family members did not reveal to Helen their knowledge of
14 Robert's prior felony conviction for child molestation. Eric was molested by Robert at Helen's
15 home and the homes and properties of Robert's family members. Helen sued the family members
16 for general negligence and premises liability. (*Eric J., supra*, at 717) The court found that no
17 special relationship existed and that plaintiff was merely attempting to impose liability for non-
18 feasance. (*Id.* at 727-728) The *Eric J.* court relied in part on *Thompson v. County of Alameda*
19 (1980) 27 Cal.3d 741. In *Thompson*, the county released a juvenile offender with latent, extremely
20 dangerous and violent propensities regarding young children. This release occurred even though
21 the county knew that the juvenile offender would, if released, "take the life of a young child
22 residing in the neighborhood." (*Eric J., supra*, at 725-726) After the release, the juvenile offender
23 murdered a child a few doors down from the home of the juvenile's parents where he was residing.
24 The *Eric J.* court noted that the Supreme Court in *Thompson* affirmed the judgment after a
25 demurrer was sustained without leave to amend finding that there was no duty to warn. The court
26 noted that the Supreme Court held, "Because the case involved 'non-specific threats of harm
27 directed at non-specific victims' ... there was no duty on the part of the county to warn of the
28 release of an inmate with a violent history." (*Eric J. v. Betty M., supra*, at 726) Therefore, Linda

1 Vista's alleged knowledge of the prior molestation by Campos and its failure to warn constitutes
2 non-feasance which does not impose a legal duty of care to plaintiffs since it had no knowledge of
3 any specific potential victim.

4 In *Wise v. Superior Court* (1990) 222 Cal.App.3d 1008, defendant's husband went on a
5 shooting spree and injured plaintiff. The appellate court agreed with the trial court and held that
6 the wife owed no legal duty of care to the plaintiff because there was no special relationship
7 between the defendant and her husband that gave her the *legal authority* to control the conduct of
8 her husband nor was she in the position to know that her husband would shoot the plaintiff. (*Wise*
9 *v. Superior Court, supra*, 222 Cal.App.3d at 1013-1015)

10 "In general, one owes no duty to control the conduct of a third person to prevent him from
11 causing physical harm to another, absent a special relationship between the defendant and either
12 the person whose conduct needs to be controlled or the foreseeable victim of that conduct." (*Wise*
13 *v. Superior Court, supra*, at 1013) The special relationships between the defendant and the person
14 whose conduct needs to be controlled are parent and child (Rest.2d Torts, § 316), master and
15 servant (§ 317), the possessor of land or chattels (who has a duty to control the conduct of a
16 licensee (§ 318), and "[o]ne who takes charge of a third person whom he knows or should know to
17 be likely to control bodily harm to others if not controlled" (§ 319). (*Id.*) "In all of the above
18 relationships, the *ability* to control the third party is essential." (*Id.*) "[T]he absence of such ability
19 is fatal to a claim of legal responsibility." (*Id.*) The duty of control owed by a master to control a
20 servant or a person or a defendant to control a third person imposes the duty only when the master
21 or the custodian of the third person has knowledge of a "specific risk to an identifiable and
22 foreseeable victim." (*Megeff v. Doland* (1981) 123 Cal.App.3d 251, 257) In the case of *Megeff*,
23 landlords brought a negligence action against the tenant's wife and daughter following an attack
24 upon the landlords by the tenant's father. Landlords contended that the wife and daughter failed to
25 control the father. The court of appeal affirmed the trial court's granting of the summary
26 judgment and held the following:

27 "The uncontroverted facts establish that Charlotte Doland occupied not position of
28 *legal authority* over her father's person. In addition, it is clear that she lacked the
opportunity to physically observe and exercise control over his conduct. Hence,

1 she lacked both the ability to control and the concomitant legal responsibility.
2 There being no triable issues of material fact as to duty, summary judgment was
3 property granted.” (*Id.*, at 261)

4 Like the *Megeff* and *Wise* cases, Linda Vista had no *legal authority* over Campos and the
5 acts of molestation occurred in locations where it had no physical ability to observe and exercise
6 control over Campos’s conduct. Without such legal authority or the ability to observe and
7 exercise control over Campos, Linda Vista owed no legal duty as a matter of law to the plaintiffs.

8 Dorman and Gamboa rely upon the cases of *Wallace v. Der-Ohanian* (1962) 199
9 Cal.App.2d 141 [summer camp could be held liable for attack by unknown assailant on girl
10 staying at camp because of lack of supervision of child] and *O’Hara v. West Seven Trees Corp.*
11 (1977) 75 Cal.App.3d 798 [landlord liable for not warning tenant that a rapist had already
12 assaulted several female tenants]. Those cases are factually distinguishable from this situation.

13 The *Wallace* and *O’har* decisions were premises liability cases where Civil Code section 1714
14 imposed a legal duty upon a property owner to protect persons on their property from dangerous
15 conditions which can include third-party criminal acts. *Eric J.* stated, “The need for a connection
16 to the actual property itself, or some activity organized upon it, is underscored by the rationale in
17 cases where no liability has been allowed.” (*Eric J.* at 722) Neither Dorman nor Gamboa were
18 molested in connection with any activity organized by Linda Vista nor did the acts of molestation
19 occur on Linda Vista property. In *Rosenbaum v. Security Pacific Corp.* (1996) 43 Cal.App.4th
20 1084, the owner of an apartment building was not liable for an attack which occurred across the
21 street from the victim’s apartment even though the victim had parked there precisely because the
22 apartment’s garage was unsafe. Once again, this emphasizes a need for a connection to the
23 property itself.

24 Other cases where duties were imposed upon a defendant for the criminal acts of a third
25 person upon the victim plaintiff involve factual situations where there was *affirmative acts of*
26 *misrepresentation* of known criminal propensities of the perpetrator. In *Pamela L. v. Farmer*
27 (1980) 112 Cal.App.3d 206, the wife of sex offender was held to be liable for telling the parents of
28 three children that it would be “safe for them to play at her house.” (*Pamela L.*, at 212) The
Pamela L. court distinguished its case from the traditional “non-feasance cases” because of the

1 wife's affirmative representations had increased the likelihood of harm to the three plaintiffs.
2 (See, *Id.*, at 209-210) She specifically invited the children to her home and thereby "assumed" a
3 "special relationship." (*Id.*, at 211) The *Eric J.* court distinguished itself from the *Pamela L.* case
4 and stated the following:

5 "In essence, *Pamela L.* is a negligent or intentional misrepresentation case, not a
6 failure to warn case at all. It is obvious that the wife in *Pamela L.* was seen by the
7 court as functioning as a *procurer* of victims for her husband. Here, by contrast,
8 Helen has pointed to no affirmative misrepresentations as to how "safe" Eric might
9 have been if left alone with Robert; nor does she make any suggestion that family
10 members were acting to facilitate any molestation." (*Eric J. v. Betty M., supra*, at
11 729)

12 There is no evidence of *affirmative acts of misrepresentation* by Linda Vista to the
13 plaintiffs or their parents that it would be safe for the plaintiffs to be with or around Campos.
14 Dorman and Gamboa contend that this court should apply the traditional seven factors used in
15 *Rowland v. Christensen* to establish a legal duty. That contention was also made by the plaintiff in
16 *Eric J.* The court rejected that request and stated the following:

17 "Helen invites us to consider the duty question here under the traditional seven
18 factors used by the courts. [Citations omitted] That weighing process, however,
19 has already been done by courts over the centuries in formulating the "no duty to
20 aid" rule. We need only add that any result other than the one we reach today
21 under the facts of this case would create intolerable conflicts of interest within
22 families." (*Eric J. v. Betty M., supra*, at 729-30)

23 Like the rationale in *Eric J.*, any result to impose a legal duty of care would create
24 intolerable conflicts between members of the congregation of a religion or any non-profit
25 organization who rely upon volunteers. It would be against public policy to impose liability upon
26 members of a non-profit organization who volunteer their time to be responsible for the acts of
27 other members when those acts have no connection to the activities or property of the non-profit
28 organization. The only connection between Gamboa, Dorman and the defendant Campos was
29 they happen to meet while Campos was a member of the congregation of Linda Vista. Campos
30 was never an elder or ministerial servant. The plaintiffs have presented hearsay evidence that
31 contradicts Campos's testimony and the other testimony in evidence submitted by the defendant
32 that Campos was never a regular pioneer. Assuming Campos was a pioneer, a regular pioneer is
33 simply a publisher who has agreed to spend a specified number of hours going door to door to

1 spread the word of God and discuss the Bible with members of the community. Whether Campos
2 was a regular pioneer or not is not a material fact in ruling on this motion. The fact remains, the
3 molestation did not occur while Campos was conducting field service or acting on behalf of Linda
4 Vista in any way, did not occur on its property, and there were no *affirmative acts of*
5 *misrepresentation* by Linda Vista about Campos.

6 With regard to Gamboa, he relies on the case of *Randi W. v. Muroc Joint Unified School*
7 *District* (1997) 14 Cal.4th 1066 and the Restatement of Torts for his contention that there was
8 some legal duty that was owed and breached by Linda Vista to warn him of the risks associated
9 with Campos. The *Randi W.* case is distinguishable from the facts in this case. In *Randi W.*, the
10 issue before the court was "under what circumstances courts may impose tort liability on
11 employers who fail to use reasonable care in recommending employees for employment without
12 disclosing material information bearing on their fitness." (*Randi W.*, *supra*, 14 Cal.4th at 1070) In
13 *Randi W.*, defendant Gadams molested a student while serving as a vice principal at a middle
14 school. Plaintiff filed suit against Gadams and his former employer, Muroc Joint Unified School
15 District. Plaintiff Randi W. alleged that the District made affirmative misrepresentations about
16 Gadams and concealed information about his qualifications from his new employer. Gadams had
17 allegedly made improper contact with female students while working for the District. The District
18 sent a letter of recommendation noting numerous aspects of Gadams tenure including his "genuine
19 concern" for students and his "outstanding rapport" with everyone, and concluded "I wouldn't
20 hesitate to recommend Mr. Gadams for any position!" (*Randi W.*, at 1071-1072) The letter made
21 no mention of his prior misconduct. Relying upon the Restatement 2d of Torts sections 310 and
22 311, the *Randi W.* court held that the school district had made *affirmative misrepresentations* and
23 therefore owed a duty under the Restatement Second to reveal all facts known to it. Once the
24 school district decided to speak, it was obligated "to disclose all other facts which 'materially
25 qualify' the limited facts disclosed." (*Randi W.*, *supra*, at 1082)

26 Unlike *Randi W.*, plaintiffs submit no evidence that Linda Vista engaged in affirmative
27 acts of misrepresentation of material information about Campos to Dorman, Gamboa or to Playa
28 Pacifica Spanish Congregation. The *Randi W.* court held that an *implied misrepresentation* is not

1 enough. (*Randi W.*, supra, at 1083) Dorman and Gamboa contend that because Campos was a
2 member of the Linda Vista, that the Congregation has impliedly represented to other members that
3 he is a person of good moral character and is someone that is safe to be around. Even if that were
4 true, the law does not to impose a legal duty of care to the plaintiffs based upon implied
5 misrepresentations about Campos and his character.

6
7 **II**

8 **NO DUTY OWED BASED UPON AGENCY OR RATIFICATION**

9 Plaintiffs Dorman and Gamboa contend in the second amended complaint that Linda Vista
10 is vicariously liable for the abuse by Campos based upon their theory that Linda Vista ratified the
11 conduct of Campos. “The theory of ratification is generally applied where an employer fails to
12 investigate or respond to charges that an employee committed an intentional tort, such as assault
13 or battery.” (*Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 170.) Evidence of ratification may
14 also include an employer’s failure to discharge an agent or employee despite knowledge of his
15 unfitness. (*McChristian v. Popkin* (1946) 75 Cal.App.2d 249, 256.) Plaintiffs Dorman and
16 Gamboa’s theories of ratification do not apply in this instance.

17 Plaintiffs’ opposition relies upon Restatement sections 315 and 317. However, the express
18 language of those sections make it clear those sections apply only in situations where the principal
19 and agent relationship existed and the agent was engaged in some activity associated with the
20 agency. The nexus between the agency and the work entrusted to the agent by the principal is best
21 described in the case of *Evan F. v. Hughson United Methodist Church* (1992) 8 Cal.App.4th 828
22 relied upon by the plaintiffs. The court specifically focused on Comment d to Restatement section
23 213 which states:

24 “The principal may be negligent because he has *reason to know* that the servant or
25 other agent, because of his qualities, is likely to harm others *in view of the work*
26 [Emphasis not original] or instrumentalities *entrusted to him*.... [Emphasis not
27 original] [] An agent, although otherwise competent, may be incompetent because
28 of his reckless or vicious disposition, and if a principal, *without exercising due care*
in selection, employs a vicious person to do an act which necessarily brings him in
contact with others *while in the performance of a duty*, [Emphasis not original] he
is subject to liability for harm caused by the vicious propensity.... [¶] If liability
results it is because, under the circumstances, *the employer has not taken the care*
which a prudent man would take in selecting the person for the business at hand....
If ... the work is likely to subject third persons to serious risk of great harm, there is.

1 a special duty of investigation. [¶] Liability results under the rule stated in this
2 Section, not because of the relation of the parties, but because the employer
3 antecedently had reason to believe that an undue risk of harm would exist because
4 of the employment. [Emphasis not original] ” (Emphasis added.) (*Evan F. v.*
5 *Hughson United Methodist Church* (1992) 8 Cal.App.4th 828, 842-430)

6 Dorman was not entrusted into the care of Campos by Linda Vista. Dorman’s own mother
7 entrusted him into the custody of Campos when Campos took Dorman with him in his landscaping
8 business and molested him while engaged in Campos’s own independent business. (DUMF Nos.
9 44-45, PUMF Nos. 94-10) Linda Vista did not entrust Gamboa to Campos. Campos had
10 voluntarily left the Linda Vista and had joined the Playa Pacific Spanish Congregation. It was
11 while Campos was a member of Playa Pacifica Spanish Congregation that Gamboa was molested.
12 (DUMF No. 58) Once again, there is no evidence that Linda Vista entrusted Gamboa to Campos
13 or requested Campos to provide Bible studies or other activities with Gamboa.

14 The plaintiffs attempt to misconstrue Linda Vista’s position regarding the location of the
15 acts as being the key factor. The location and timing of Campos molestation of Dorman while
16 working at his landscaping business are relevant to establishing the lack of any causal nexus
17 between Campos and his duties and obligations as a member of the Linda Vista and the lack of
18 any ability to observe and control his conduct. Campos was not a member, ministerial servant or
19 elder for Linda Vista at the time he molested Gamboa. Linda Vista cannot ratify something
20 without there being some connection between the activity that Campos was engaged in and the
21 work relating to the agency as required by the *Evan F.* decision. Therefore, there is no duty owed
22 in this circumstance based upon an agency or ratification of conduct by Campos since the conduct
23 of Campos had no relationship to Linda Vista, its activities or any alleged agency with Campos.

24 III

25 GAMBOA CLAIM BARRED BY STATUTE OF LIMITATIONS

26 Code of Civil Procedure section 340.1 provides that a lawsuit involving childhood sexual
27 abuse must be filed before the victim reaches their 26th birthday. The statute of limitations can be
28 extended against a person or entity who “knew or had reason to know, or was otherwise on notice
of any unlawful sexual conduct by an employee, volunteer, representative, or agent, and failed to
take reasonable steps and to implement reasonable safe guards to avoiding acts of unlawful sexual

1 conduct in the future by that person, including but not limited to, preventing or avoid placement of
2 that person in a function or environment in which contact with children is an inherent part of that
3 function or environment. ..." (Code Civ. Proc. § 340.1(b)(2))

4 Campos molested Gamboa while Campos was a member of Playa Pacifica Spanish
5 Congregation. Linda Vista was not in a position to control the conduct of Campos since Campos
6 was not associated with the Linda Vista. Linda Vista could not "implement reasonable safe
7 guards, to avoid unlawful acts of sexual conduct in the future." Plaintiff Gamboa attempts to
8 argue that this court should construe the statute in a manner that disregards the express language of
9 the statute in order to carry out the legislative purpose of the statute. The rules of statutory
10 construction do not support plaintiff's position. Rules of statutory construction are as follows:

11 "In construing a statute "we begin with the fundamental rule that a court 'should
12 ascertain the intent of the Legislature so as to effectuate the purpose of the law."
13 [Citations] "An equally basic rule of statutory construction is, however, that courts
14 are bound to give effect to statutes according to the usual, ordinary import of the
15 language employed in framing them." [Citations] Although a court may properly
16 rely on extrinsic aids, it should first turn to the words of the statute to determine the
17 intent of the Legislature. [Citations] "If the words of the statute are clear, the court
18 should not add to or alter them to accomplish a purpose that does not appear on the
19 face of the statute or from its legislative history." [Citations]" (*California Teachers
20 Assn. v. San Diego Cmty. Coll. Dist.*, (1981) 28 Cal.3d 692, 698)

17 In summary, there is no evidence to establish that the exception to the statute of limitations
18 is applicable to Gamboa regarding his claims against Linda Vista. Therefore, summary judgment
19 should be granted.

20 IV

21 **PLAINTIFFS' EIGHTH CAUSE OF ACTION FOR VIOLATION OF CIVIL CODE 22 SECTION 1708.5 SHOULD BE DISMISSED FOR LACK OF LEGAL DUTY**

23 The defendant's moving papers pointed out that the plaintiffs' eighth cause of action for
24 violation of Civil Code section 1708.5 is applicable only against a person who commits a sexual
25 battery. There is no evidence that has been submitted that Linda Vista committed sexual batteries
26 upon either of these plaintiffs. The plaintiffs have failed to cite any legal authority in opposition
27 to that aspect of defendant's motion. Defendant Linda Vista requests this court to summarily
28 adjudicate plaintiffs' eighth cause of action for violation of Civil Code section 1708.5.

V

JOHN DORMAN'S CLAIM THAT CAMPOS WAS ACTING AS AN AGENT OF LINDA VISTA SPANISH CONGREGATION WOULD ENTANGLE THE COURT IN RELIGIOUS DOCTRINE, CONTRARY TO THE PROHIBITIONS OF THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION

The court cannot entertain Dorman's claim of agency based upon Campos being a congregation member without a constitutionally impermissible intrusion into the religious beliefs of Jehovah's Witnesses. The agency issue raised by Dorman requires the court to determine whether Campos's field ministry was controlled and supervised by Watchtower, which in turn requires an examination of the religious beliefs, practices and internal government of Jehovah's Witnesses. Such an evaluation would entangle this court into an examination and evaluation of the religious organization of Jehovah's Witnesses in violation of the First Amendment and the California State Constitution analog. Consequently, pursuant to the Ecclesiastical Abstention Doctrine based upon the First Amendment of the United States Constitution, this court is prohibited from conducting a judicial evaluation of the Jehovah's Witnesses religious practice, beliefs, and internal government. (See *Watson v. Jones* (1871) 80 US 679; *Serbian Eastern Orthodox Diocese v. Milivojevich* (1976) 426 US 696) The Ecclesiastical Abstention Doctrine is discussed in more detail in the reply brief submitted by Watchtower and for the court's benefit to avoid repeating the analysis, defendant Linda Vista refers the court to Watchtower's reply memorandum on that issue.

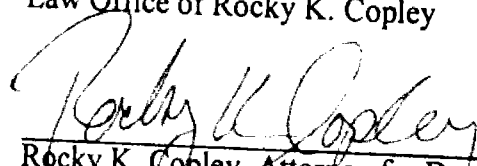
VI

CONCLUSION

In conclusion, defendant Linda Vista Spanish Congregation respectfully requests that this court grant summary judgment in favor of Linda Vista and against plaintiffs John Dorman and Joel Gamboa or, in the alternative, summary adjudication of the issues.

Dated: December 9, 2011

Law Office of Rocky K. Copley



Rocky K. Copley, Attorney for Doe 2, Linda Vista Spanish Congregation of Jehovah's Witnesses