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7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
8 **FOR THE COUNTY OF SAN DIEGO**  
9

10  
11 John Dorman, Individually, and Joel  
Gamboa, Individually,

12 Plaintiffs,

13 vs.

14 Defendant Doe 1, La Jolla Church;  
15 Defendant Doe 2, Linda Vista Church;  
16 Defendant Doe 3, Supervisory Organization;  
17 Defendant Doe 4, Perpetrator; and Does 5  
through 100,

18 Defendants.  
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Case No: 37-2010-00092450-CU-PO-CTL

**PLAINTIFF JOEL GAMBOA'S  
OPPOSITION TO DEFENDANTS'  
MOTIONS FOR SUMMARY  
JUDGMENT**

**Date: 12-16-11**

**Time: 10:30 a.m.**

**Judge: Steven R. Denton**

**Dept: C-73**

**Trial: 1-27-12**

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1 I. INTRODUCTION

2 This action results from the sexual abuse of Plaintiffs' John Dorman and Joel Gamboa, by  
3 Defendant Gonzalo Campos. At the time of the abuse, Campos was an adult man, and Plaintiffs  
4 were young boys. Plaintiffs jointly filed a complaint against Campos, Defendant Linda Vista  
5 Spanish Congregation of Jehovah's Witnesses (Linda Vista), Defendant Playa Pacifica Spanish  
6 Congregation of Jehovah's Witnesses (Playa Pacifica), and Defendant Watchtower Bible and  
7 Tract Society of New York, Inc. (Watchtower). Defendants Linda Vista, Playa Pacifica and  
8 Watchtower have each moved for summary judgment, or in the alternative, summary  
9 adjudication of Plaintiffs' claims.<sup>1</sup> This brief will serve as Joel Gamboa's consolidated  
10 opposition to the motions for summary judgment / adjudication filed by all three Defendants.

11 Each of the three Defendants challenge Joel's complaint on the ground that his claim is  
12 barred by the applicable statute of limitations, which all parties agree is Code of Civil Procedure  
13 § 340.1.<sup>2</sup> Watchtower and Playa Pacifica claim that Joel cannot avail himself of the delayed  
14 discovery provision of section 340.1 because he always remembered that he had been abused and  
15 he has spoken to his mother, some Elders within the Jehovah's Witness faith, his ex-girlfriend,  
16 and his current girlfriend about the abuse. These arguments are flatly refuted by *Lent v. Doe*  
17 (1995) 40 Cal.App.4th 1177, and *Sellery v. Cressey* (1996) 48 Cal.App.4th 538, which  
18 unequivocally hold that a victim of sexual abuse need not repress his memory of the abuse to  
19 utilize the delayed discovery provisions of section 340.1

20 Linda Vista claims that the delayed discovery provision of section 340.1 does not apply to  
21 Joel's claim because Campos was not its "employee, volunteer, representative, or agent" at the  
22 time of the abuse of Joel, and that Plaintiff did not file his claim prior to his twenty-sixth  
23 birthday, which would otherwise mark the outside limit for commencement of a claim. This  
24 argument also misconstrues the language of section 340.1, which contains no requirement that  
25 the delayed discovery provision only applies in circumstances when the abuser occupies one of  
26 those specified positions at the time of the abuse.

27  
28 <sup>1</sup> Joel has asserted claims against all Defendants. John has asserted claims against  
Campos, Linda Vista and Watchtower only.

<sup>2</sup> All further section references are to the Code of Civil Procedure unless otherwise noted.

1 Each Defendant argues that vicarious liability is unavailable to Plaintiff because the  
2 sexual molestation occurred outside the course and scope of Campos' agency with Defendants.  
3 This argument is largely unnecessary since this Court ruled on the Defendants' Demurrer in this  
4 action that respondeat superior, as it relates to the molestation itself, was unavailable to Plaintiff  
5 since sexual molestation is outside the scope of employment per se. Defendants do not consider  
6 that respondeat superior is still available to hold the institutional Defendants vicariously liable  
7 for the negligence of their agents in hiring, supervising, and retaining Campos, and in failing to  
8 warn, train or educate Plaintiff. Defendants claim that they did not ratify Campos's sexual abuse  
9 of children, but their arguments are unavailing and inconsistent with controlling law.

10 Linda Vista argues that it owed no duty Joel Gamboa since the molestation occurred at a  
11 time when Campos was no longer associated with Linda Vista. This argument fails however,  
12 because Linda Vista breached several duties while Campos was associated with Linda Vista.

13 Each of Defendants' motions for summary judgment / adjudication should be denied.

14 **II. THIS COURT SHOULD DENY DEFENDANTS' MOTIONS FOR SUMMARY**  
15 **JUDGMENT/ADJUDICATION SINCE PLAINTIFF HAS ESTABLISHED**  
16 **TRIALBLE ISSUES OF MATERIAL FACT**

17 This Court should deny Defendants' motions for summary judgment/adjudication since  
18 several triable issues of fact exist. Summary judgment is only proper when there are no triable  
19 issues of material fact and the defendant is entitled to judgment as a matter of law. *Kahn v.*  
20 *Eastside Union High School District* (2003) 31 Cal. 4th 990, 1002. The burden of persuasion  
21 remains with the party moving for summary judgment. *Id.* Summary adjudication is proper  
22 when there are no triable issues of material fact. Code of Civil Procedure § 437(c)(o)(1).  
23 Evidence of the non-moving party must be liberally construed. *Vournas v. Fidelity National*  
*Title Insurance Co.* (1999) 73 Cal. App. 4th 668, 672.

24 Whether a claim is barred by the statute of limitations is a factual question to be left for  
25 the determination of the jury. *Jolly v. Eli Lilly & Co.* (1988) 44 Cal.3d 1103, 1112. Summary  
26 judgment is only proper when the facts are undisputed and subject to only one legitimate  
27 inference. *Id.* The evidence submitted by Plaintiff far surpasses his obligation to show the  
28 existence of a question of fact, it establishes that his claim was timely filed. Summary judgment  
must be denied on this issue.



1 Whether the defendant owed plaintiff a duty of care is a question of law. *Huggins v.*  
2 *Longs Drug Stores California Inc.* (1993) 6 Cal. 4th 124, 129. On the other hand, “[t]he  
3 existence of an agency is a question of fact [citation omitted], which may be implied from the  
4 conduct of the parties.” *Thayer v. E.R. Co.* (1961) 55 Cal.2d 430, 438; *see also Stevens v. Roman*  
5 *Catholic Bishop of Fresno* (1975) 49 Cal.3d 877, 884 (“Whether an agency exists is a question of  
6 fact to be determined from the circumstances of each case.”) A determination of whether an  
7 agency exists can only be made as a matter of law when the essential facts are not in conflict.  
8 *Wickham v. Southland Corp.* (1985) 168 Cal.App.3d 49, 55. Triable issues of fact exist as to  
9 Campos’ status as an agent of Linda Vista, as a result, Linda Vista’s motion should be denied.

10 Whether a principal has ratified the conduct of its agent is also a question of fact. *Siva v.*  
11 *General Tire & Rubber Co.* (1983) 146 Cal.App.3d 152, 159 (“Ratification is a question of fact  
12 and may be proved by circumstantial evidence”); *see also C.R. v. Tenet Healthcare Corp.* (2009)  
13 169 Cal.App.4th 1094, 1111 (“[w]hether an employer has ratified an employee’s conduct is  
14 generally a factual question.”) Plaintiff has presented ample evidence for his claim of ratification  
15 to proceed to a jury.

16 The vast majority of the issues raised by Defendants’ motions are factual questions that  
17 may only be decided at summary judgment if the facts are not in dispute and there is only one  
18 reasonable interpretation of the undisputed facts. Many facts in this action are in dispute, and  
19 Plaintiff has identified numerous triable issues of material fact. Summary judgment should be  
20 denied.

## 21 **II. FACTUAL HISTORY**

### 22 **A. The Hierarchical Structure of the Jehovah’s Witness Faith**

23 The Jehovah’s Witness Faith is organized in a hierarchical structure. During the relevant  
24 periods of time, the Watchtower sat atop the hierarchy with respect to issues of appointment of  
25 leaders (called Elders and Ministerial Servants) in local congregations, and provided local  
26 congregation leaders with direction when difficult issues arose, including issues relating to sexual  
27 abuse of children by Jehovah’s Witnesses. Local congregations of Jehovah’s Witnesses  
28 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.

1 Local congregations of Jehovah's Witnesses are directed by Elders. The Body of Elders  
2 is responsible for administering the day to day operations of the congregation. Elders coordinate  
3 the activities of the congregation, including meetings and field service. Elders also help  
4 members deal with problems that may arise in their personal lives. (Plaintiffs' Undisputed  
5 Material Fact 1 ("PUMF").) Elders are viewed reverently by members of the congregation, and  
6 members are required to approach one of the congregation's Elders with any accusation of  
7 wrongdoing, including childhood sexual abuse. (PUMF 2.)

8 Prospective Elders are selected from among the congregation's Ministerial Servants and  
9 thoroughly vetted by the Body of Elders. (PUMF 3.) If a Ministerial Servant meets the  
10 qualifications to become an Elder, the Body of Elders makes a recommendation to Watchtower.  
11 (PUMF 4.) Watchtower approves or rejects the appointment. (PUMF 4.) Elders are agents of  
12 both the Watchtower and the local congregation to which they are appointed. (PUMF 5.)

13 Through a published Elder handbook called *Pay Attention to Yourselves and to All the*  
14 *Flock*, and through letters directed to the Bodies of Elders, the Watchtower provides Elders of  
15 local congregations with detailed instruction regarding an extremely broad range of topics  
16 including responding to childhood sexual abuse, maintaining congregation files, handling judicial  
17 matters, nurturing Baptized males who meet the requirements to become Ministerial servants and  
18 Elders, what to tell people who want to leave real property to the congregation upon their  
19 passing, how to structure weekly congregation meetings and how long they should last, among a  
20 myriad other major and minor instructions. (PUMF 6.)

21 A Ministerial Servant is a male Baptized Publisher who has been delegated added  
22 responsibilities within the congregation. Male Baptized Publishers are recommended to become  
23 Ministerial Servants by the Body of Elders. Watchtower then has the final say as to whether the  
24 appointment is confirmed. (PUMF 7.)

25 A Pioneer is a Baptized Publisher who has committed to spend a certain amount of time  
26 per month preaching. To become a Pioneer, a Publisher must be approved by a committee of  
27 Elders. In addition to maintaining the requirements of good morals to be a Baptized Publisher,  
28 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. (PUMF 8.)

1 Pioneers are viewed as examples in the congregation. When Elders are considering  
2 offering privileges, such as a position as a Ministerial Servant, service as a Pioneer would make a  
3 prospective privilege holder stand out. Being a Pioneer gives a member position that stands out  
4 in the congregation, which enhances his or her status in the congregations. (PUMF 9.)

5 Field Service is an important part of the Jehovah's Witness faith. Field Service involves  
6 members of the congregation going from door to door and preaching to people living in the  
7 community. (PUMF 10.) Not everyone is permitted the privilege of participating in Field  
8 Service. Instead, that privilege is reserved for people who are "Publishers." (PUMF 11.)

9 If someone wants to participate in Field Service, he or she must request to be approved as  
10 a Publisher. (PUMF 12.) A committee of Elders within the congregation will consider that  
11 request. (PUMF 13.) The committee will interview the prospective Publisher and determine  
12 whether he or she has sufficient knowledge of the bible to participate in Field Service, and will  
13 also determine whether he or she is living his or her life in accordance with Christian Bible  
14 principles. (PUMF 14.) Since Publishers are given the privilege of representing the  
15 congregation in the community, they must not be engaged in immorality. (PUMF 15.)

16 Publishers can be either Baptized or Un-Baptized, with greater rights and responsibilities  
17 being reserved for Publishers who have been Baptized. (PUMF 16.) Once a male Publisher has  
18 been Baptized, he can lead field service; give Bible Study, "participate in the school and then  
19 with time, he can receive certain privileges if he is a male, such as becoming a ministerial servant  
20 or elder." (PUMF 17.) A Baptized Publisher can also work as a missionary or serve as a Pioneer.  
21 (PUMF 18.) **Baptism as one of Jehovah's Witness is an ordination as a minister of the**  
22 **Jehovah's Witness faith.** (PUMF 19.)

23 To be baptized as one of Jehovah's Witnesses a prospective member must study the bible.  
24 Campos for instance, studied for at least six months and maybe as many as twelve months before  
25 he was able to become baptized. (PUMF 20.) Campos studied with a Baptized Publisher once  
26 per week during this time prior to being baptized, and also studied on his own. (PUMF 21.)  
27 Prior to becoming baptized, Campos was interviewed by one or two Elders of the congregation,  
28

1 and was asked a series of approximately eighty questions based on his study of the Bible that he  
2 had to answer thoughtfully prior to being ordained. (PUMF 22.)

3 When a Publisher gives Bible Study, he is required to complete a form and turn that form  
4 into the Congregation Secretary. (PUMF 23.) The form indicates the name and address of the  
5 person to whom the Publisher has given Bible Study as well as the dates of each session. (PUMF  
6 23.) Publishers are also required to file a Service Report with the Congregation Secretary  
7 detailing the amount of time they spend in service. (PUMF 24.)

8 Formal Field Service begins with a "meeting for Field Service." This meeting is often led  
9 by a congregation Elder, or Ministerial Servant. (PUMF 25.) The meeting for Field Service  
10 generally begins with a discussion of a daily scripture, and the accompanying Watchtower  
11 comment. Then, a demonstration is given explaining how to present the material that day, and  
12 discussing the literature that will be offered. Finally, the members are divided into car groups by  
13 the person conducting the meeting for Field Service and instructed which territory to visit.  
14 (PUMF 26.)

15 During field service, the congregation members call on homes in their assigned territory.  
16 They knock on the door and initiate contact with the residents. They distribute literature, attempt  
17 to engage the residents in discussion about the Jehovah's Witness faith and invite interested  
18 residents to attend meetings at the Kingdom Hall. The congregation members will endeavor to  
19 start a home Bible Study with the residents they contact. The Literature distributed by  
20 congregation members during Field Service is published by Watchtower New York. (PUMF 27.)  
21 The congregants' efforts to invite residents to attend meetings at the Kingdom Hall, or to begin  
22 Home Bible Studies are the primary means by which the Jehovah's Witnesses, including local  
23 congregations and Watchtower New York, attract new members to their faith. (PUMF 28.)

24 The Theocratic Ministry School and the Service Meeting provide weekly instruction to  
25 congregants regarding methods for approaching individuals and of literature distribution and  
26 training to improve the effectiveness of the congregants' presentation. (PUMF 29.) The  
27 congregant's progress is tracked and recorded. (PUMF 31). Congregants are also required to  
28

1 observe Watchtower's dress code and personal grooming guidelines when engaged in formal  
2 Field Service. (PUMF 32.)

3 **B. Campos' Ordination and Elevation in the Jehovah's Witness Faith**

4 Campos was born on January 10, 1963 in Mexico City, Mexico. Campos attended school  
5 in Mexico and did not complete junior high school. He moved to the United States with his  
6 mother in approximately 1979 or 1980. Campos began to associate with Linda Vista in  
7 approximately 1979 or 1980, when he came to the United States. Campos studied the Bible and  
8 attended meetings at Linda Vista. He became an Un-Baptized Publisher in approximately 1980.  
9 (PUMF 33.) Campos was ordained as a minister of the Jehovah's Witness Faith when he was  
10 baptized in 1980. (PUMF 34.)

11 When Campos was nineteen years of age, which would have been approximately 1982,  
12 an announcement was made to the Linda Vista Spanish Congregation that Campos would be  
13 serving as a Pioneer. Campos continued to serve as a Pioneer in Linda Vista. (PDMF 1.)  
14 Campos later served as a Pioneer in the Playa Pacifica Congregation. (PUMF 35.)

15 After moving to Playa Pacifica, Campos was appointed as a Ministerial Servant on  
16 December 22, 1988. (PUMF 36.) Campos was appointed as an Elder of Playa Pacifica in June  
17 of 1993. (PUMF 37.) Campos served as the Congregation Secretary of Playa Pacifica. (PUMF  
18 38.)

19 **C. The 1982 Complaint**

20 In approximately 1982, Campos molested a young member of Linda Vista. (PUMF 39.)  
21 Immediately following the incident, John Doe, informed his mother of the abuse. (PUMF 40.)  
22 Campos confessed his inappropriate sexual conduct to Doe's mother just after it happened.  
23 (PUMF 41.) Doe's mother reported the abuse to multiple Elders associated with Linda Vista.  
24 (PUMF 42.)

25 The allegation was brought before the entire Body of Elders of Linda Vista. (PUMF 43.)  
26 Two Elders were assigned to investigate the accusation. (PUMF 44.) Within one or two days of  
27 the molestation, Doe was interviewed by at least one Elder from Linda Vista and informed the  
28

1 Elder(s) of the abuse by Campos. (PUMF 45.) Campos was also interviewed by multiple Elders  
2 from Linda Vista and admitted that he “had touched [John Doe] inappropriately.” (PUMF 46.)

3 The Elders did not punish Campos. (PUMF 47.) Justino Diaz, an Elder at the time of the  
4 accusation, considered it to be a minor matter since Campos’ mother and the victim’s mother  
5 were apparently able to work out some resolution. (PUMF 48.) Diaz knew that molestation was  
6 a crime and that once a person has molested a child, he may repeat that conduct. (PUMF 49.)  
7 Nonetheless, the police were not called, Campos’ service privileges were not restricted, further  
8 victims were not sought, and the congregation was not warned about the dangers posed by  
9 Campos. (PUMF 50.) Campos continued to be allowed to preach door to door, and to give bible  
10 study sessions to minor children. (PUMF 51.)

#### 11 **D. The 1986 Complaint**

12 In 1986, Campos’ sexual abuse of children was again brought to the attention of the  
13 Elders of Linda Vista. A Judicial Committee was formed at that time to investigate, determine  
14 Campos’ guilt and level of repentance, and to impose punishment. (PDMF 2.)

15 When a grave sin committed by a congregation member is brought to the attention of a  
16 local congregation’s Elders, two Elders are assigned to investigate. (PUMF 52.) Those two  
17 Elders determine if there is a sufficient justification for the creation of a Judicial Committee.  
18 (PUMF 53.) If there are either multiple witnesses to the sin, or if the accused confesses his sin, a  
19 Judicial Committee will be formed. (PUMF 54.) The Judicial Committee will be comprised of  
20 the original two Elders assigned to investigate, and usually at least one more Elder. (PUMF 55.)  
21 The Judicial Committee will then determine what punishment is appropriate. (PUMF 56.) The  
22 sinner can be disfellowshipped, which is a period of expulsion from the local congregation, or if  
23 the Judicial Committee determines the sinner is truly repentant, he or she can be reprovved, which  
24 entails some public or private censorship but no expulsion from the congregation. (PUMF 104.)  
25 In order for a person to be reprovved, he must first have admitted his sin.

26 The Judicial Committee formed in 1986 to look into Campos’ alleged sexual misconduct  
27 determined that Campos was repentant for his sins and therefore chose to reprove him, rather  
28 than expel him from the congregation. (PDMF 3.) Specifically, the Judicial Committee imposed

1 a six to nine month period of private censorship on Campos, during which time his service  
2 privileges were somewhat restricted. (PDMF 4.)

3 **E. The Division of the Linda Vista Congregation**

4 During 1986 or 1987, Linda Vista had grown large enough that it could divide into two  
5 distinct congregations. At that time, La Jolla came into existence. (PUMF 57.) Linda Vista was  
6 the "parent congregation" of La Jolla. This means that the complete membership originally  
7 comprising La Jolla were former members of Linda Vista. (PUMF 58.) In addition, the  
8 inaugural Elders of La Jolla, Luis Rivera and Ramon Preciado, had previously been members  
9 from Linda Vista. (PUMF 59.) Luis Rivera had served on the 1986 Judicial Committee that  
10 investigated Campos' sexual abuse of children. (PDMF 5.)

11 **F. The Dorman Complaint in April of 1994**

12 In April of 1994, John and Manuela Dorman learned that their son John had been  
13 sexually molested by Campos. (PUMF 60.) Upon learning that her son had been molested, Mrs.  
14 Dorman called Campos and confronted him. Campos admitted to sexually abusing John  
15 Dorman, and informed Manuela Dorman that the Elders were already aware of the issue and he  
16 had been found repentant. (PUMF 61.) Campos was an elder of La Jolla at the time of the  
17 confrontation.

18 At that time, Manuela Dorman also called Roberto Rivera, who was the father of another  
19 boy that John Dorman believed had been molested by Campos. Roberto Rivera informed  
20 Manuela that he had already been warned of the danger posed by Campos, and that he would  
21 have to speak with his son and with the Elders at Playa Pacifica and call her back. (PUMF 62.)  
22 When Roberto Rivera returned Manuela Dorman's call, he informed her that the Elders wanted  
23 her to know that if she continued to pursue the matter, an affair she had engaged in years ago  
24 would be disclosed within the congregation. Roberto Rivera also conveyed the message that too  
25 many years had passed and there was nothing that Manuela Dorman could do. (PUMF 63.)

26 Following these calls, the Dormans sent a letter to Mrs. Dorman's local congregation,  
27 accusing Campos of sexually abusing their son. The letter of complaint was forwarded to  
28

1 Watchtower. (PUMF 64.) Watchtower held onto the letter for almost two months, then  
2 forwarded it to La Jolla. (PUMF 65.)

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

5 The forwarding instructions from Watchtower to Playa Pacifica asked for an investigation  
6 into the allegations to be conducted, and for a prompt reply to be sent back to Watchtower  
7 regarding the matter. (PUMF 66.) Upon receiving the letter, Campos was asked by an Elder of  
8 La Jolla whether the accusations were true, and Campos confirmed the allegations. (PUMF 67.)

9 Notwithstanding Campos' confession, almost one full year elapsed between Manuela  
10 Dorman's phone calls to Campos and Roberto Rivera, and her concurrent letter to her local  
11 congregation before any response from Playa Pacifica to Watchtower. More than eight months  
12 passed between Watchtower's letter to Playa Pacifica and the Elders' reply. In addition, even  
13 after receiving a written complaint about the molestation of John Dorman, Campos continued to  
14 function in a leadership capacity in Playa Pacifica as an Elder, Secretary of the Congregation and  
15 as a Pioneer. (PUMF 68.)

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

19 When Playa Pacifica responded to Watchtower with a letter regarding the Dorman  
20 allegation, the responsive letter indicated that Campos had been reprovved years ago, and his  
21 restrictions had been lifted several months before he was appointed as a ministerial servant.  
22 Playa Pacifica stated that the amount of time that had passed between the censure and Campos'  
23 elevation to Ministerial Servant (about 15 months) was sufficient, and closed the matter. (PUMF  
24 69.)

25 Manuela Dorman would not let the issue go. She continued to call Jehovah's Witnesses  
26 who she knew from Linda Vista and tell them about what Gonzalo Campos had done. She  
27 learned that Joel Gamboa may have been a victim of abuse and informed the Elders of Playa  
28 Pacifica. (PUMF 70.)

Ultimately, Campos was disfellowshipped in June of 1995 for sexually abusing Joel  
Gamboa; not for sexually abusing John Dorman. (PUMF 71.) This subsequent abuse was



1 discovered when Gamboa's mother spoke to Elders of the congregation in May of 1995. (PUMF  
2 72.) Until the Gamboa complaint was received, Campos was not the subject of a Judicial  
3 Committee relating to the Dorman accusation, and would not have been disfellowshipped.

#### 4 **G. Campos' Reinstatement**

5 After he was disfellowshipped in 1995, Campos repeatedly sought reinstatement as one of  
6 Jehovah's Witnesses. (PUMF 73.) In 1996, he confessed to the Elders that he had molested  
7 three additional children while serving as a Ministerial Servant at Playa Pacifica. (PUMF 74.)  
8 The Elders discussed the nature of the sexual acts committed by Campos in the correspondence  
9 with Watchtower, including acts of mutual masturbation, oral copulation and sodomy. (PUMF  
10 75.) Notwithstanding the horrible acts known to have been committed by Campos, Defendants  
11 quibbled about whether Campos' acts constituted abuse, or whether he could be considered "a  
12 person who is known as someone who has sexually abused a child." (PUMF 76.) Campos was  
13 reinstated as one of Jehovah's Witnesses on April 21, 2000. (PUMF 77.)

#### 14 **IV. THE ABUSE OF JOEL GAMBOA**

15 From his birth until approximately January of 1995, Joel Gamboa was associated Linda  
16 Vista. (PUMF 77.) Joel Gamboa met Gonzalo Campos at Linda Vista. (PUMF 78.) Although  
17 Campos attended the La Jolla Congregation after it was formed, Campos continued to visit Linda  
18 Vista and attend occasional meetings there. (PUMF 79.) Campos gave Bible Study sessions to  
19 Joel Gamboa. (PUMF 80.) The sexual abuse of Joel began during a Bible Study session and  
20 continued to occur during subsequent Bible Study sessions. (PUMF 81.) Playa Pacifica was  
21 aware, or should have been aware, that Campos taught Bible Study to Joel. (PUMF 82.)

22 Joel Gamboa was sexually abused by Gonzalo Campos between 1988 or 1989 and  
23 December of 1994. (PUMF 83.) The abuse occurred as often as two or three times per week.  
24 (PUMF 84.) The abuse included oral copulation, attempted sodomy, digital anal penetration of  
25 Joel, and mutual masturbation. (PUMF 85.) The abuse ended when Joel Gamboa moved to  
26 Phoenix, Arizona. (PUMF 86.) Campos has admitted to the abuse. (PUMF 87.)

27 In 2008, or 2009, Joel first realized that he was overly protective of his young son.  
28 (PUMF 88.) In 2009, Joel learned that Campos was a member of the Playa Pacifica Spanish

1 Congregation. (PUMF 89.) In light of the abuse that he had experienced at Campos' hands' Joel  
2 was upset by this revelation. (PUMF 89.)

3 Joel has used drugs in the past, though he does not believe his usage amounts to drug  
4 abuse. He experiences sexual performance issues with women, he is overly protective of his  
5 children and hyper vigilant. He feels depressed, insecure, mistrustful and has low self-esteem.  
6 (PUMF 90.)

7 Joel had been evaluated by a highly qualified and experienced psychologist, Dr. Robert  
8 Geffner, who has determined:

9 "The nature of the abuse, and surrounding circumstances appear to have caused Joel to  
10 block out and dissociate most of the details of the abuse, and the feelings he experienced  
11 at the time. As a result, Joel did not understand at the time of the childhood sexual abuse  
12 that he had been victimized, nor was he capable of understanding that he had suffered  
13 psychological injury as result of the sexual abuse by Campos until recently. . . [¶] . . . It is  
14 my opinion that Joel is still struggling to understand that the sexual abuse by Campos has  
15 affected his life. He does not presently understand the entire scope of the damage that he  
16 has experienced as a result of the abuse, particularly relating to his substance use, sexual  
17 difficulties, anger and depression that have been present for quite some time, tracing back  
18 to adolescence. . . [¶] . . . Joel is now beginning to realize the connection between the  
19 sexual abuse he experienced as a child, and the psychological injury and consequences he  
20 has experienced as an adult, but he did not begin to make such a connection until after  
21 two events took place: the revelation to Joel that Campos was still practicing as a  
22 Jehovah's Witness in San Diego, and his realization that his own children could  
23 experience similar abuse." (PUMF 91.)

24 **V. PLAINTIFF GAMBOA'S ACTION IS NOT BARRED BY THE STATUTE OF  
25 LIMITATION**

26 Each Defendant claims that Plaintiff Gamboa's action is barred by the statute of  
27 limitations. All agree that Code of Civil Procedure § 340.1 contains the statute of limitations  
28 controlling the filing a claim by a now-adult victim of childhood sexual abuse, such as Plaintiff  
Gamboa. That section provides in pertinent part:

- 29 (a) In an action for damages suffered as a result of childhood sexual abuse, the time  
30 for commencement of the action shall be within eight years of the date the  
31 plaintiff attains the age of majority or within three years of date the plaintiff  
32 discovers or reasonably should have discovered that psychological injury or  
33 illness occurring after the age of majority was caused by the sexual abuse,  
34 whichever period expires later, for any of the following actions:
- 35 (a)(2) An action for liability against any person or entity who owed a duty of care to the  
36 plaintiff, where a wrongful or negligent act by that person or entity was a legal  
37 cause of the childhood sexual abuse which resulted in the injury to plaintiff.  
38

1 (a)(3) An action for liability against any person or entity where an intentional act by that  
2 person or entity was a legal cause of the childhood sexual abuse which resulted in  
the injury to plaintiff.

3 (b)(1) No action described in paragraph (2) or (3) of subdivision (a) may be commenced  
4 on or after the plaintiff's 26th birthday.

5 (b)(2) This subdivision does not apply if the person or entity knew or had reason to  
6 know, or was otherwise on notice, of any unlawful sexual conduct by an  
7 employee, volunteer, representative or agent, and failed to take reasonable steps,  
8 and to implement reasonable safeguards to avoid acts of unlawful sexual conduct  
9 in the future by that person, including, but not limited to, preventing or avoiding  
placement of that person in a function or environment in which contact with  
children is an inherent part of that function or environment. For purposes of this  
subdivision, providing or requiring counseling is not sufficient, in and of itself, to  
constitute a reasonable step or reasonable safeguard.

10 Three California cases have interpreted the delayed discovery component of Code of  
11 Civil Procedure § 340.1.

12 In *Lent v. Doe*, the plaintiff was sexually abused over a three year period beginning when  
13 he was twelve. (1995) 40 Cal.App.4th 1177, 1180. As a result of the abuse, the plaintiff  
14 developed "feelings of 'deep shame, self-blame and self-loathing.'" *Id.* at 1181. The plaintiff  
15 buried his memories of the abuse as far as he could out of his conscious mind. *Id.* The plaintiff  
16 always knew he was abused, and became "an angry, alienated and sometimes suicidal person."  
17 *Id.* "As a result of [the] defendant's actions, [the plaintiff] became subject to psychological  
18 mechanisms of denial and dissociation . . . said mechanisms naturally and reasonably prevented  
19 plaintiff from being able to discover that psychological injuries occurring in his adult life were  
20 causally related to the sexual abuse . . . until . . . plaintiff underwent counseling." *Id.* at 1181-  
21 1182. At the demurrer stage, the court found that although the plaintiff had always known he  
22 was abused, and knew he suffered actual and appreciable injury at the time of the abuse,  
23 plaintiff's allegation that he had not discovered the cause of his adulthood psychological injury or  
24 illness until he began psychological treatment was sufficient to allege delayed discovery under  
25 section 340.1(a). *Id.* at 1186.

26 In *Sellery v. Cressey*, the 37 year old plaintiff alleged that she was sexually abused by her  
27 mother and father when she was a child. (1996) 48 Cal.App.4th 538, 541. The plaintiff always  
28 remembered that she had been sexually abused, however it was not until 1991 when she entered  
therapy for her depression, dissociation and sexual dysfunction that she was able to recall the full

1 extent of the abuse. *Id.* at 542. The defendants argued that the statute of limitations began  
2 running on the plaintiff's claim in 1984, several years before the complaint was filed, when "the  
3 psychological problems for which [the plaintiff] ultimately sought treatment started surfacing."  
4 *Id.* at 547. Defendants claimed that the plaintiff should have discovered her claim at that time.  
5 *Id.* The plaintiff introduced the testimony of two psychological experts who found that she had  
6 used "various defense mechanisms, such as dissociation, rationalization and an extreme process  
7 of self-blaming and self-shaming as a defense against having full and conscious awareness of the  
8 ways in which such abuse had damaged her as an adult" and opined that these mechanisms  
9 prevented her from connecting the abuse to her injuries until she began therapy. *Id.* at 547-548.  
10 The court agreed with the plaintiff and reversed the grant of summary judgment. *Id.* at 548.

11 In *K.J. v. Arcadia Unified School District*, the plaintiff, as a minor, was seduced by her  
12 high school teacher in late 2003 or early 2004 and was abused until she graduated from high  
13 school in July of 2006. (2009) 172 Cal.App.4th 1229, 1235. At that time, the plaintiff told her  
14 mother of the abuse and began to receive counseling. *Id.* The plaintiff's mother reported the  
15 abuse to law enforcement and the perpetrator was arrested in October of 2006. *Id.* In July of  
16 2007, approximately one year after beginning therapy, the plaintiff discovered the cause of her  
17 injuries. *Id.* at 1236, 1243. Despite knowing of the abuse, disclosing the abuse to her mother,  
18 knowing that the abuser had been arrested, convicted and sentenced to twelve years in prison for  
19 the abuse, and undergoing approximately one year of counseling, the plaintiff's claim did not  
20 accrue under section 340.1(a) until two months before she filed her notice of claim against the  
21 public entity defendant. *Id.* at 1235-1236.

22 With that framework in mind, Defendants have failed to meet their burden of  
23 demonstrating that Plaintiff's claim is barred by the statute of limitations. Defendants argument  
24 that reasonable minds could not differ and this court must find as a matter of law that Plaintiff  
25 made the requisite causal connection more than three years before he filed his complaint herein is  
26 rather remarkable.  
27  
28

1           **A. Watchtower's Claim that Joel's Action is Barred by the Statute of**  
2           **Limitations Misconstrues Requirements of Code of Civil Procedure § 340.1**

3           The entirety of Watchtower's argument regarding the timeliness of Joel's claim can be  
4           distilled to once sentence: Watchtower claims Joel cannot prove that he recently discovered that  
5           the sexual abuse caused him to suffer psychological injury during his adulthood "because he has  
6           testified that he has 'always known about the abuse' and he never blocked it out, and that he told  
7           others about the abuse freely since he was fourteen or fifteen in 1995." (WT MSJ at 19.) This  
8           argument is premised on a misunderstanding of the law. Watchtower's argument must be  
9           rejected.

10           Code of Civil Procedure § 340.1, does not contain a requirement that a victim of abuse  
11           must repress his memory, or forget that the abuse occurred to qualify to utilize its delayed  
12           discovery provisions. This precise argument was made by the defendants in both *Lent* and  
13           *Sellery*. Both courts rejected this position. In *Lent*, the court specifically noted: "that plaintiff  
14           did not repress the memories of the abuse inflicted upon him does not mean he cannot take  
15           advantage of the delayed discovery provisions of section 340.1. Nothing in section 340.1 requires  
16           that memories of abuse be repressed as a prerequisite to a delayed discovery claim." 40  
17           Cal.App.4th at 1186; *see also Sellery*, 48 Cal.App.4th at 547 ("total repression of all memory of  
18           the abuse is not necessary to toll the statute.") The fact that Plaintiff always remembered that he  
19           had been abused, and did not completely block it out, has no bearing on whether his claim is  
20           timely under Code of Civil Procedure § 340.1.

21           The second portion of Watchtower's argument, that Joel's action must be time-barred  
22           because he told others about the abuse at various times since 1995, is similarly unavailing. In  
23           *K.J.*, the plaintiff relied on the discovery provision of Code of Civil Procedure § 340.1 to toll the  
24           accrual of her claim, so that she could present a timely tort claim against a public entity more  
25           than one year after the abuse ended. 172 Cal.App.4th at 1235-36. There, the plaintiff had told  
26           her mother about the abuse in July of 2006, had her friend help send a communication to her  
27           abuser, and met with a counselor for nearly one full year before the court determined that the  
28           plaintiff had discovered the cause of her injuries. *Id.* Acknowledging and confiding that a  
          person is a victim of childhood sexual abuse is not a psychological injury or illness. If simply

1 telling another of the abuse was enough to establish a connection, K.J.'s action would have been  
2 barred.

3 Defendant has failed to meet its threshold burden of demonstrating that Plaintiffs' action  
4 is time barred. As a result, Defendant Watchtower's motion for summary judgment on the issue  
5 of the statute of limitations must be denied.

6 **B. Playa Pacifica's Arguments Rely on Misapplication of the Provisions of Code**  
7 **of Civil Procedure § 340.1**

8 Playa Pacifica makes each of the same ill-fated arguments advanced by Watchtower. It is  
9 not entirely clear from the briefing, but Playa Pacifica also appears to claim that Joel cannot  
10 produce evidence to demonstrate that he discovered the cause of his adulthood psychological  
11 injuries within three years before filing his claim. (PP MSJ at 5-6.) Playa Pacifica offers a  
12 meager showing that Joel has not received treatment, does not believe that he has had drug  
13 addiction or alcohol abuse problems and does not have difficulties in his relationships with  
14 women and that his loss of faith was experienced while still a minor. (PP MSJ at 6-7.)

15 This offering is insufficient to meet Playa Pacifica's burden, but is nonetheless refuted by  
16 Plaintiff's factual showing that he has experienced sexual performance issues, depression,  
17 insecurity, low self-esteem, and trust issues (PUMF 90), and that Joel still does not fully  
18 comprehend the multitude of ways in which he has been affected by the abuse. (PUMF 91.)  
19 Given those facts, and Dr. Geffner's opinion that Joel's dissociative reaction to the abuse is  
20 reasonable and consistent with the response of many victims of childhood sexual, and that Joel  
21 reasonably did not understand that he had suffered psychological injury as a result of the abuse  
22 until after he learned that Campos was still permitted to be a member of the Jehovah's Witness  
23 Religion in San Diego, and concluded that his own children could be similarly abused. (PUMF  
24 91.) These events took place within three years prior to the filing of the complaint. (PUMFS 88  
25 and 89.) Joel's action was timely filed and Playa Pacifica's motion for summary judgment  
26 should be overruled.

1           **C. Linda Vista's Argument Would Require this Court to Add Language to**  
2           **Section 340.1, and Undercut the Purpose of the Statute By Incentivizing**  
3           **Institutions to Shuffle Abusers from Place to Place**

4           As laid out above, adult victims of childhood sexual abuse may commence their action at  
5 any time prior to turning twenty-six. Cal. Code Civ. Proc. § 340.1(a)(2) and (b)(1). If the  
6 Defendant "knew or had reason to know, or was otherwise on notice, of any unlawful sexual  
7 conduct by an employee, volunteer, representative or agent, and failed to take reasonable steps,  
8 and to implement reasonable safeguards to avoid acts of unlawful sexual conduct in the future by  
9 that person" then the victim can bring an action after his twenty-sixth birthday, and within three  
10 years of discovering the cause of his adulthood psychological injuries. Cal. Code Civ. Proc. §  
11 340.1(b)(2).

12           Linda Vista argues that Joel's claim became barred on his twenty-sixth birthday because  
13 Campos was not Linda Vista's "employee, volunteer, representative or agent" at the time of the  
14 molestation, and that Plaintiff consequently cannot utilize Section 340.1 (b)(2) to extend the  
15 statute of limitations past his twenty-sixth birthday. (LV MSJ at 14.) Linda Vista also claims  
16 that since Campos was not associated with Linda Vista at the time of the molestation, it could not  
17 possibly "implement reasonable safeguards, to avoid unlawful acts of sexual conduct in the  
18 future."<sup>3</sup> (LV MSJ at 14.)

19           These arguments are doomed by a reading of the clear language of the statute. In  
20 interpreting a statute, it is the responsibility of the court to interpret the words that are written,  
21 not to supply omitted language. Cal. Code Civ. Proc. § 1858. The statute does not state that the  
22 "employee, volunteer, representative or agent" of which the defendant had notice must have been  
23 in that position at the time of the molestation of the plaintiff. Instead, the statute clearly applies

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28           <sup>3</sup> Linda Vista also argues that it had no duty to "prevent molestation of its members by  
members of another congregation." (LV MSJ at 14.) As more fully discussed herein, Linda  
Vista owed several duties to Plaintiff, those duties were breached, and Plaintiff was injured. This  
argument has not merit.

1 if, when the abuser was its “employee, volunteer, representative or agent” it did not take  
2 appropriate safeguards.<sup>4</sup>

3 This makes sense because the employer with knowledge of the abuser’s past unlawful  
4 conduct has the ability to prevent future acts of molestation by actively taking steps to prevent  
5 abuse or to enable the abuser by standing idly by.

6 Moreover, accepting Linda Vista’s interpretation of the statute would horribly undermine  
7 the purpose of the section 340.1. “The overall goal of section 340.1 is to allow victims of  
8 childhood sexual abuse a longer time period in which to bring suit against their abusers.”  
9 *McVeigh v. Doe 1* (2006) 138 Cal.App.4th 898, 903. Contrary to the goal of the statute, Linda  
10 Vista would see many culpable employers immunized from liability if they employed a policy of  
11 shuffling abusers from place to place.

12 For instance, in *Randi W. v. Muroc Joint Unified School District*, three former employers  
13 of a school administrator, each of whom had knowledge of the employee’s inappropriate sexual  
14 conduct with female students, gave positive recommendations to the career office of the  
15 employee’s college, knowing that those recommendations would be seen by prospective  
16 employers. (1997) 14 Cal.4th 1066, 1071-72. The Supreme Court of California found that in  
17 such circumstances a duty was owed by each of the former employers to a student molested at a  
18 fourth school. *Id.* at 1081. In *Archdiocese of Milwaukee v. Superior Court*, a Roman Catholic  
19 Archdiocese with knowledge of a priest’s past molestation of children arranged for that priest to  
20 be transferred to a Diocese in California where he molested several additional children. (2003)  
21 112 Cal.App.4th 423, 427-433. Although the crux of the *Archdiocese of Milwaukee* case  
22 involved a jurisdiction challenge which was denied, it is clear that the case would proceed on the  
23 merits of the California plaintiffs’ liability claims against the former employer of the perpetrator  
24

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25  
26 <sup>4</sup> Defendant may argue that this interpretation of the statute would leave an employer  
27 perpetually liable to individuals harmed by the abuser years after the employee left the  
28 employer’s service and with whom the employer has no connection. But this is not true. The  
only individuals who may pursue an action after his twenty-sixth birthday, are those to whom the  
employer owed a duty or care, or toward whom its intentional acts were the legal cause. Cal.  
Code Civ. Proc. § 340.1(a)(2) and (a)(3). Interpreting the statute as written would simply  
encourage principals with knowledge of their agent’s crimes to respond in a way that prevents  
abuse - not create perpetual liability to unknown and unknowable future victims.



1 priest. In these cases, despite clear liability for what can only be described as very culpable  
2 earlier employers, Linda Vista would see the statute of limitations applied in a manner that would  
3 provide those victims no recourse. Clearly this is inconsistent with the remedial purpose of  
4 section 340.1, which is to allow victims more access to the courts.

5 Plaintiff's action is not time-barred under the plain language of the statute. Linda Vista's  
6 motion should be denied.

7 **VI. EACH DEFENDANT IS VICARIOUSLY LIABLE FOR THE HARM**  
8 **SUFFERED BY PLAINTIFF GAMBOA**

9 Defendants argue that the sexual molestation of Plaintiff did not occur during the course  
10 and scope of Campos' agency. In this Court's ruling on Defendants' demurrer, this Court  
11 determined that "[a]buse is committed outside the scope of the cleric's employment, the doctrine  
12 of respondeat superior is not available." As such, Defendants appear to have argued a position  
13 when this Court has already ruled in their favor.

14 Linda Vista also argues that it did not ratify Campos' sexual abuse of children. Linda  
15 Vista argues that the sexual molestation of Plaintiff Gamboa took place outside the scope of  
16 Campos' relationship with Linda Vista, and also that Linda Vista cannot ratify the wrongful  
17 conduct of an individual that was not its agent.<sup>5</sup> (LV MSJ at 13.)

18 **A. Linda Vista Ratified Campos' Molestation of Children**

19 Ratification is a form of vicarious liability. The principal may become liable for an  
20 originally unauthorized tort of the agent by the subsequent ratification of the tort. 3 Witkin,  
21 Summary 10th (2005) Agency, § 164, p. 207. The failure to discharge an agent or employee  
22 despite knowledge of his unfitness is evidence tending to show ratification. *See McChristian v.*  
23 *Popkin* (1946) 75 Cal.App.2d 249, 256. "The theory of ratification is generally applied where an  
24 employer fails to investigate or respond to charges that an employee committed an intentional  
25 tort, such as assault or battery." *Baptist v. Robinson* (2006) 143 Cal.App.4th 151, 170; *see also*  
26

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27 <sup>5</sup> As to the issue of abuse occurring outside the scope of the agency, *Murillo v. Rite Stuff*  
28 *Foods*, makes clear that an employer can ratify conduct occurring outside the course and scope of  
agency. (1998) 65 Cal.App.4th 833, 852 (recognizing that sexual harassment is outside course  
and scope, but finding that employer could ratify conduct.) As a result this argument is  
unavailing.

1 *Murillo v. Rite Stuff Foods* (1998) 65 Cal.App.4th 833, 852 (finding that defendant ratified  
2 assault and battery in a sexual harassment context.)

3 “Generally, the effect of a ratification is that the authority which is given to the purported  
4 agent relates back to the time when he performed the act.” *Ballard v. Nye* (1903) 138 Cal. 588,  
5 597; see also *White v. Moriarty* (2000) 15 Cal.App.4th 1290, 1295 (“Ratification is approval of a  
6 transaction that has already taken place.”) “By ratifying an act, a principal triggers the legal  
7 consequences that follow had the act been that of an agent acting with actual authority.” *C.R.*,  
8 169 Cal.App.4th at 1112.

9 **1. Triable Issues of Material Fact Exist as to Campos’ Agency with**  
10 **Linda Vista**

11 Campos was an agent of Linda Vista between 1980 and 1987. “An agency relationship  
12 may be informally created. No particular words are necessary, nor need there be consideration.  
13 All that is required is conduct by each party manifesting acceptance of a relationship whereby  
14 one of them is to perform work for the other under the latter’s direction.”<sup>6</sup> *Malloy v. Fong* (1951)  
15 37 Cal.2 356, 372. “To constitute the relation of master and servant, the one for whom the  
16 service is rendered must consent or manifest his consent to receive the services as a master.”<sup>7</sup>  
17 Rest. 2d (Agency) § 221.

18 As outlined in the factual history section, and in Plaintiff’s Exhibits in support of his  
19 opposition, Linda Vista had complete control over who could represent the congregation as a  
20 Publisher, Baptized Publisher, or Pioneer. Linda Vista provided instruction regarding how to  
21 more effectively approach people and distribute literature (PUMF 30), and monitored and  
22 recorded congregants’ progress and evaluated congregants’ performance (PUMF 31.) Linda  
23

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24 <sup>6</sup> The approved CACI jury instruction as to the existence of an agency relationship  
25 similarly provides as follows:

26 “If [ name of plaintiff ] proves that [ name of defendant ] gave [ name of agent ]  
27 authority to act on [his/her/its] behalf, then [ name of agent ] was [ name of  
28 defendant ]’s agent. This authority may be shown by words or may be implied by  
the parties’ conduct. This authority cannot be shown by the words of [ name of  
agent ] alone.” CACI § 3705 (Existence of “Agency” Relationship Disputed.)

<sup>7</sup> “One who volunteers services without an agreement for or expectation of reward  
may be a servant of the one accepting such services.” Rest. 2d (Agency) § 225.

1 Vista enforced compliance with established Jehovah's Witness standards for grooming and  
2 personal appearance among its members (PUMF 32) and also policed congregants' personal  
3 conduct and ensured that it complied with Jehovah's Witness standards, including conduct  
4 occurring off site and during the congregants' free time. (PUMFS 52-56.)

5 Linda Vista also accepted the benefit of Campos' efforts on its behalf. When Campos  
6 performed Field Service or gave Bible Study sessions, he was recruiting for Linda Vista and  
7 Watchtower, since Field Service is the primary means by which new members are attracted to the  
8 congregation and the faith. (PUMFS 27 and 28.)

9 It is indisputable that Linda Vista had the ability to decide whether to accept or reject  
10 Campos into the Congregation, and also exercised the ability to control his conduct, not just at  
11 congregation events but also in his private life, through the judicial process and the possibility of  
12 reproof or disfellowship. Campos undoubtedly performed work for the benefit of Linda Vista,  
13 who not only accepted the benefits of his efforts, but also provided him instruction regarding  
14 how to be more effective in his service, monitored his progress, and recorded the time he spent in  
15 service.

16 A jury could easily find that Campos was Linda Vista's agent while serving as a Baptized  
17 Publisher(ordained minister), and would be hard pressed to find that Campos was not Linda  
18 Vista's agent when he was serving as a Pioneer. A triable issue of material fact exists as to  
19 Campos' Agency.

## 20 **2. Linda Vista Ratified Campos' Molestation of Children**

21 Linda Vista was made aware of Campos' molestation of John Doe in 1982. Linda Vista  
22 interviewed Doe, and Campos confessed to touching Doe inappropriately. (PUMFS 39-46.)  
23 Linda Vista had full knowledge, or an opportunity to gain full knowledge regarding the abuse,  
24 but chose not to discipline Campos. By allowing Campos to retain his position as a Baptized  
25 Publisher and promoting him to the position of Pioneer, Linda Vista ratified Campos' sexual  
26 abuse of children. Later, in 1986, Linda Vista's Elders conducted a Judicial Committee  
27 regarding Campos' molestation of a child. Campos confessed and after a nine month period of  
28

1 private censure was fully reinstated. Linda Vista again ratified or approved the molestation of  
2 children by Campos.

### 3                                   3.       **Playa Pacifica Ratified Campos' Molestation of Children**

4           From its inception, Playa Pacifica was aware of Campos' past sexual abuse of children;  
5 that his molestation of children had been the subject of a Judicial Committee in 1986; that  
6 Campos had confessed to molesting children; and that Campos had been subjected to private  
7 censorship as a result of his confession. Nonetheless, even with knowledge of Campos' past  
8 sexual abuse of children, Playa Pacifica and Watchtower repeatedly promoted Campos. First, to  
9 the position of Ministerial Servant and then to the positions of Elder and Congregation Secretary.  
10 Finally, when a direct written complaint was made regarding the molestation of John Dorman by  
11 Campos, Playa Pacifica defended its position to allow Campos to become a Ministerial Servant  
12 and allowed him to continue to serve as an Elder, Pioneer and Congregation Secretary until a  
13 later complaint was received. By acting in this manner, Playa Pacifica ratified Campos' sexual  
14 abuse of children.

### 15                                   4.       **Watchtower Ratified Campos' Molestation of Children**

16           Apart from acting to ratify Campos' molestation of children through its agents, the Elders  
17 of Playa Pacifica and Linda Vista, Watchtower ratified Campos' conduct by appointing Campos  
18 as a Ministerial Servant and Elder of Playa Pacifica after gaining knowledge of his earlier abuse  
19 of children. Watchtower also ratified Campos' molestation of children by sitting on the Dorman  
20 letter of complaint for nearly two months before forwarding the letter to Playa Pacifica, and then  
21 allowing Playa Pacifica to take nine months to respond to the accusations. Finally, Watchtower  
22 ratified Campos' abuse of children by knowingly permitting Campos to continue to serve as an  
23 Elder, Pioneer and the Secretary of Playa Pacifica even after receiving written notice of Campos'  
24 abuse of John Dorman and one other child.

### 25                                   B.       **Each Defendant is Vicariously Liable Under the Doctrine of Respondeat 26 Superior for the Negligence of its Agents in Hiring, Supervising and 27 Retaining Campos, and in Failing to Warn, Train or Educate Gamboa**

28           While this Court has held that the sexual abuse of minors occurs outside the scope of  
agency, the issue of the vicarious liability of a principal for the negligent acts of its agents

1 occurring during the course and scope of the agency has been well-established in California. It is  
2 “settled that an employer's vicarious liability may extend to willful and malicious torts of an  
3 employee as well as negligence.” *Delfino v. Agilent Technologies, Inc.* (2006) 145 Cal.App.4th  
4 790, 812 (underline emphasis added.) Similarly, in *Hoff v. Vacaville Unified School District*, the  
5 court noted that through various statutes of the Government Code: “the Legislature incorporated  
6 general standards of tort liability as the primary basis for respondeat superior liability against  
7 public entities. Under them, a school district is vicariously liable for injuries proximately caused  
8 by the negligence of school personnel responsible for student supervision.”(1998) 19 Cal.4th  
9 925, 932-933 (underline emphasis added.)

10 Elders and Ministerial Servants of local congregations of Jehovah’s Witnesses are agents  
11 of both that local congregation to which the individual has been appointed, as well as  
12 Watchtower. (PUMF 5.) Moreover, Plaintiffs have established below that the congregation,  
13 which must act through its agents, owed a duty to protect Joel Gamboa from Campos and a  
14 special duty to investigate Campos. To the extent that the Elders of Linda Vista and Playa  
15 Pacifica were negligent in carrying out these duties as it relates to the treatment of Campos’  
16 sexual abuse of children, each of the three moving Defendants can be held vicariously liable.  
17 Defendants’ motions for summary judgment on the issue of vicarious liability should be denied.

#### 18 **VII. LINDA VISTA OWED SEVERAL TORT DUTIES TO GAMBOA**

19 Linda Vista argues that they owed no duty to Plaintiffs that can support any negligence  
20 based claim. In its argument, Linda Vista mis-characterizes California law as requiring a special  
21 relationship between the Defendants and the Gamboas as a pre-requisite to the imposition of a  
22 duty to protect the Plaintiff. In truth, a defendant’s duty to a plaintiff can be established in  
23 multiple ways. In this case, Linda Vista owed duties to protect Gamboa based on application of  
24 the *Rowland* factors, given the special relationship between Linda Vista and Campos, the special  
25 relationship between Linda Vista and Gamboa, and a special duty to protect under Restatement  
26 (Second) of Agency Section 213.  
27  
28

1                   **A.     The Rowland Factors Support the Existence of a Duty to Protect**  
2                   **Plaintiff**

3                   Since the initial publication of *Rowland v. Christian* (1968) 69 Cal.2d 108, its  
4                   “innumerable judicial descendants have adopted the *Rowland* court’s multi-element duty  
5                   assessment in determining whether a particular defendant owed a tort duty to a given plaintiff.”  
6                   *Adams v. City of Fremont* (1998) 68 Cal.App.4th 243, 267-268, (fn. omitted.) “The goal of  
7                   applying the *Rowland* factors has been described as the ascertainment of whether the category of  
8                   negligent conduct at issue is sufficiently likely to result in the kind of harm experienced that  
9                   liability may appropriately be imposed on the negligent party.” *Juarez v. Boy Scouts of America*  
10                  (2000) 81 Cal.App.4th 377, 401 (internal quotation omitted.)

11                  The *Rowland* factors include: (1) the foreseeability of harm to the injured party; (2) the  
12                  degree of certainty that the injured party has suffered harm; (3) the closeness of the connection  
13                  between the defendant’s conduct and the injury suffered; (4) the moral blame attached to the  
14                  defendant’s conduct; (5) the policy of preventing future harm; (6) the extent of the burden to the  
15                  defendant; and (7) the consequences to the community of imposing a duty to exercise care, with  
16                  resulting potential liability. *Rowland*, 69 Cal.2d at 112-113.

17                  With regard to the issue of the foreseeability factor, *Wallace v. Der-Ohanian* (1962) 199  
18                  Cal.App.2d 141, is instructive. There, a camp owner put two 11-year-old girls in a cabin alone,  
19                  without supervision. *Id.* at 141-42. One of the girls was raped and sued the camp owner for  
20                  negligence. *Id.* The court of appeal stated:

21                         It is certain that there exists in our civilization the constant possibility that persons  
22                         suffering from a lack of proper mental balance or normal decency might subject  
23                         young people to molestation. This fact is illustrated by frequent newspaper  
24                         accounts of crimes against children, the many litigated criminal cases, accounts of  
25                         which may find their way into reports, and the concern of Legislature evidenced  
26                         by the enactment of many laws for the protection of children. It is also noted in  
27                         magazine articles and talks before organizations such as the Parent-Teacher  
                              Associations throughout the country. The general feeling of the public that this  
                              problem does exist in a threatening way leading to the conclusion that people  
                              charged with the care of children should guard against it is confirmed in treatment  
                              of the question in ‘Sexual Behavior in the Human Female’ by Kinsey, pages 116  
                              to 122.

28                  *Id.* at 146 (citing numerous articles relating to sex abuse of children.)

1 In the years since the *Wallace* opinion, “the scourge of childhood sexual abuse has not  
2 abated; and the danger that a child who participates in organized youth activities will encounter a  
3 sexual predator certainly is at least as foreseeable now as it was then.” *Juarez*, 81 Cal.App.4th at  
4 404. In *O’Hara v. Western Seven Trees Corp.*, the appellant was raped on the premises of her  
5 apartment building after the landlord had knowledge that a rapist was active in the area and did  
6 not take actions to protect her from harm. (1977) 75 Cal.App.3d 798, 801. The court noted:

7 “An analysis of the factors set forth in *Rowland v. Christian*, supra, 69 Cal.2d  
8 108, 113, shows that there is potential liability here. The existence of the most  
9 important factor, foreseeability, was alleged. Respondents allegedly knew of the  
10 past assaults and of conditions making future attacks likely. By not acting  
11 affirmatively to protect appellant, they increased the likelihood that she would  
12 also be a victim. This failure to act, either by warning appellant or by providing  
13 adequate security, allegedly created a risk of injury to appellant.”

14 *Id.* at 804. *Wallace*, *Juarez* and *O’Hara* each involved criminal sexual assaults, yet each  
15 still used the *Rowland* factors to establish the existence of a duty to protect. This Court should  
16 do the same.

17 Linda Vista knew that Campos had been accused of molesting a minor in 1982. (PUMFS  
18 39-44.) Linda Vista also knew that Campos had been accused of molesting a minor in 1986.  
19 (PDMFS 2-4.) Finally, at least one of Linda Vista’s Elders knew that sexual molestation was a  
20 crime and that the molester could strike again. (PUMF 49.) The sexual abuse of Plaintiff was  
21 foreseeable. This factor favors the imposition of a duty to protect Plaintiff.

22 Plaintiff experienced substantial damage as a result of the conduct of Campos and Linda  
23 Vista (PUMFS 90 and 91), and Campos admitted to the abuse of Plaintiff during his deposition.  
24 (PUMF 87.) There is certainly no reason to doubt that Plaintiffs suffered harm. Moreover, as the  
25 *Juarez* court noted “there is empirical support for the proposition that sexual abuse of children  
26 can be mitigated through implementation of programs designed to educate young people and  
27 their adult caretakers about sexual abuse.” 81 Cal.App.4th at 406. There can further be no doubt  
28 that the aggressive vetting of employees, agents and volunteers who exhibit a propensity to abuse  
children is also a successful deterrent of childhood sexual abuse. As such, both the certainty of  
harm, and the closeness of the harm to Linda Vista’s conduct support the imposition of a duty to  
protect Plaintiff.

1 The policy of preventing future harm and the consequences to the community support the  
2 imposition of similar duties on Linda Vista. "The interests of the state in protecting the health,  
3 emotional welfare and well-rounded growth of its young citizens, together with its undeniable  
4 interest in safeguarding the future of society as a whole, weigh strongly in favor of imposing a  
5 duty in this case." *Id.* at 407. These interests cause the policy of preventing harm and the  
6 consequences to the community of that harm factors to support the imposition of a duty.

7 Finally, the burden imposed by this duty is nothing more than the duty imposed on any  
8 institution where its employees or agents are institutionally in contact with children. In light of  
9 the high duty of care owed to children, the burden imposed by such a duty places no added  
10 burden on this or any other defendant, and therefore this factor weighs in Plaintiff's favor. The  
11 *Rowland* factors favor the imposition of a tort duty to protect Plaintiff from harm by Campos.

12 **B. Linda Vista Owed Plaintiff a Duty of Care Based on Special**  
13 **Relationship between Linda Vista and Campos**

14 Notwithstanding that a duty may properly be imposed after balancing the *Rowland*  
15 factors, "[i]n some instances, our Supreme Court has engaged in a duty analysis under both [the  
16 *Rowland* and special relationship] standards." *Adams*, 68 Cal.App.4th at 267. A duty may arise  
17 "if (a) a special relation exists between the actor and the third person which imposes a duty upon  
18 the actor to control the third person's conduct, or (b) a special relation exists between the actor  
19 and the other which gives the other a right to protection." RESTATEMENT (SECOND) OF  
20 TORTS § 315; *see also Davidson v. City of Westminster* (1982) 32 Cal.3d 197, 203. As  
21 discussed herein, Linda Vista owed a duty to Gamboa under the policy-driven *Rowland* analysis,  
22 as well as due to the existence of a special relationship between Linda Vista and Campos.

23 **1. The special relationship between Linda Vista and Campos**  
24 **gives rise to a duty to protect Plaintiff**

25 A duty to protect Plaintiff from foreseeable injury caused by Campos is created by Linda  
26 Vista's special relationship with Campos. Restatement (Second) of Torts § 317 provides that:

27 "A master is under a duty to exercise reasonable care so as to control his servant  
28 while acting outside the scope of his employment as to prevent him from  
intentionally harming others or from so conducting himself as to create an  
unreasonable risk of bodily harm to them, if (b) the master (i) knows or has reason  
to know that he has the ability to control his servant, and (ii) knows or should  
know of the necessity and opportunity for exercising such control."



1                                    **i. Linda Vista knew it had the ability to control Campos'**  
2                                    **actions**

3                                    Campos was a Baptized Publisher in Linda Vista since 1980, and was a Pioneer with  
4 Linda Vista after the first known accusation of sexual abuse in 1982. As discussed more fully  
5 above, and in Plaintiff's Exhibits, Linda Vista knew that it had the ability to monitor, regulate  
6 and impose punishment for Campos' conduct. In 1982, Linda Vista counseled Campos after the  
7 first accusation. (PUMFS 39-47.) In 1986, Linda Vista privately reproved Campos after the  
8 second allegation. (PDMF 2-4.) Linda Vista had the ability to control Campos.

9                                    **ii. Linda Vista knew it was necessary to exercise control**  
10                                    **over Campos to prevent others from being injured**

11                                    Linda Vista was twice informed of Campos' dangerous propensity to molest children  
12 (PUMFS 39-44 and PDMF 2-4) while both Campos and Joel were associated with Linda Vista.  
13 Linda Vista Elder Justino Diaz knew in 1982 that Campos' conduct was criminal and that he  
14 might repeat it. (PUMF 49.) Linda Vista undoubtedly knew that it was necessary to exercise  
15 control over Campos.

16                                    Because Linda Vista knew it had the ability to control Campos' actions, and that it was  
17 necessary for Linda Vista to exercise that control to prevent children from being sexually abused,  
18 Linda Vista was a special relationship with Campos that creates a duty of care to the Plaintiff  
19 under Restatement (Second) of Torts Sections 315 and 317.

20                                    **2. Linda Vista owed a special duty to investigate due to its**  
21                                    **knowledge of Campos' propensity to harm others**

22                                    A principal can be held negligent for failure to protect against the criminal actions of their  
23 agents, if such actions were foreseeable. The essential focus in such cases is whether the  
24 defendant knew or had reason to know of their agent's dangerous propensity and thereafter failed  
25 to take reasonable steps to prevent that harm. *See Evan F. v. Hughson United Methodist Church*  
26 (1992) 8 Cal.App.4th 828, 836.

27                                    In *Evan F.*, the perpetrator was accused in 1971 of sexually abusing a 13 year-old boy  
28 while working as a Methodist minister. *Id.* at 831. In 1977, the perpetrator began working at the  
defendant church. *Id.* at 832. Around 1982, the church hired the perpetrator as its new pastor.  
*Id.* at 832. When the perpetrator was hired, the hiring committee knew there was some difficulty

1 with the perpetrator's reappointment and understood he had been on sabbatical of some kind. *Id.*  
2 at 843. The hiring committee did not perform any investigation into his prior employment. *Id.*  
3 In 1985, the perpetrator sexually molested the plaintiff. *Id.* The Appellate Court held there were  
4 triable issues of fact regarding whether the Church had reason to believe the perpetrator was unfit  
5 or whether the Church failed to use reasonable care in investigating him. *Id.* at 843.

6 The *Evan F.* court relied on Restatement (Second) of Agency § 213, which provides: "A  
7 person conducting an activity through servants or other agents is subject to liability for harm  
8 resulting from his conduct if he is negligent or reckless . . . in the employment of improper  
9 persons or instrumentalities in work involving risk of harm to others." *Id.* at 836. The court  
10 specifically focused on Comment d to section 213 which states:

11 "The principal may be negligent because he has reason to know  
12 that the servant or other agent, because of his qualities, is likely to  
13 harm others in view of the work or instrumentalities entrusted to  
14 him. An agent, although otherwise competent, may be  
15 incompetent because of his reckless or vicious disposition, and if a  
16 principal, without exercising due care in selection, employs a  
17 vicious person to do an act which necessarily brings him in contact  
18 with others while in the performance of a duty, he is subject to  
19 liability for harm caused by the vicious propensity. If liability  
20 results it is because, under the circumstances, the employer has not  
21 taken the care which a prudent man would take in selecting the  
22 person for the business at hand. If ...the work is likely to subject  
23 third persons to serious risk of great harm, there is a special duty of  
24 investigation. Liability results under the rule stated in this Section,  
25 not because of the relation of the parties, but because the employer  
26 antecedently had reason to believe that an undue risk of harm  
27 would exist because of the employment." *Id.* at 842.

28 Linda Vista was aware of Campos' sexual abuse of minors in 1982 and 1986. (PUMFS  
39-44 and PDMFS 2-4.) Linda Vista knew that Campos would continue to come into contact  
with children in his work as Linda Vista's agent. Linda Vista owed a special duty of  
investigation under Restatement (Second) of Agency § 213.

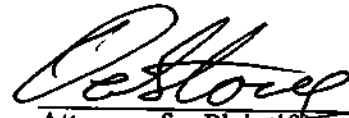
### VIII. CONCLUSION

Substantial questions of fact exist as to what position Campos held in the Linda Vista  
Congregation in the early 1980s, and as to the existence of the 1986 accusation against Campos.  
Even assuming that Campos was a Baptized Publisher through the duration of his association  
with Linda Vista, genuine issues of material fact exist as to whether he was the agent of Linda

1 Vista. Moreover, Plaintiff has produced overwhelming evidence that Plaintiff Gamboa timely  
2 filed his action. For these reasons, each of Defendants' motions for summary judgment should  
3 be denied.

4 Respectfully submitted,  
5 THE ZALKIN LAW FIRM, P.C.

6  
7 Dated: 12-21'

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9 \_\_\_\_\_  
10 Attorney for Plaintiffs  
11 John Dorman and Jeel Gamboa  
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11 I, Lisa E. Maynes, am employed in the city and county of San Diego, State of  
12 California. I am over the age of 18 and no a party to the action; my business address is 12555  
13 High Bluff Drive, Suite 260, San Diego, CA 92130.

14 On December 2, 2011, I caused to be served:

- 15 1. **PLAINTIFF JOHN DORMAN'S OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
- 16 2. **PLAINTIFF JOEL GAMBOA'S OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
- 17 3. **DECLARATION OF DEVIN M. STOREY IN SUPPORT OF PLAINTIFFS' OPPOSITIONS TO THE THREE MOTIONS FOR SUMMARY JUDGMENT OF DEFENDANTS**
- 18 4. **PLAINTIFFS' RESPONSE TO DEFENDANT PLAYA PACIFICA SPANISH CONGREGATION'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS; AND PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
- 19 5. **PLAINTIFFS' RESPONSE TO DEFENDANT DOE 2 LINDA VISTA SPANISH CONGREGATION'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS; AND PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
- 20 6. **PLAINTIFFS' RESPONSE TO DEFENDANT WATCHTOWER'S SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS; AND PLAINTIFFS' SEPARATE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**
- 21 7. **PLAINTIFF JOHN DORMAN'S NOTICE OF LODGMENT IN SUPPORT OF HIS OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**
- 22 8. **PLAINTIFF JOEL GAMBOA'S NOTICE OF LODGMENT IN SUPPORT OF HIS OPPOSITION TO DEFENDANTS' MOTIONS FOR SUMMARY JUDGMENT**

1 in this action by placing a true and correct copy of said documents(s) in sealed envelopes  
addressed as follows:

2 **SEE ATTACHED SERVICE LIST**

3  (BY MAIL) I am readily familiar with the firm's practice of collection and processing  
correspondence for mailing. Under that practice it would be deposited with the U.S.  
4 Postal Service on that same day with postage thereon fully prepaid at San Diego,  
California, in the ordinary course of business. I am aware that on motion of the party  
5 served, service is presumed invalid if postal cancellation date or postage meter date is  
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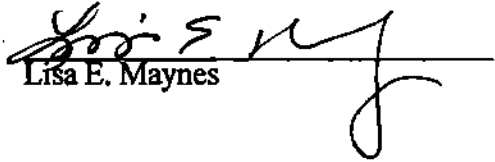
6  (BY PERSON SERVICE) By causing to be delivered by hand to the offices of the  
7 addressee(s).

8  (BY OVERNIGHT DELIVERY) By sending by Federal Express to the addressee(s) as  
indicated on the attached list.

9  (BY FAX) I caused to be transmitted to the above-described document by facsimile  
10 machine to the fax number(s) as shown. The transmission was reported as complete  
and without error. (Service by Facsimile Transmission to those parties on the attached  
11 List with fax numbers indicated.)

12  
13 I declare under penalty of perjury under the laws of the State of California that the  
foregoing is true and correct.

14  
15 Dated: 12-2-11

  
Lisa E. Maynes

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