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

**PLAINTIFFS REPLY TO PLAYA
PACIFICA SPANISH
CONGREGATION'S OPPOSITION
TO PLAINTIFFS' MOTION TO
AMEND COMPLAINT TO ALLEGE
PUNITIVE DAMAGES**

**Date: 12-2-11
Time: 10:30 a.m.
Judge: Steven R. Denton
Dept: C-73**

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**PLAINTIFFS REPLY TO PLAYA PACIFICA SPANISH CONGREGATION'S OPPOSITION
TO PLAINTIFFS' MOTION TO AMEND COMPLAINT TO ALLEGE PUNITIVE DAMAGES**

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1 **I. INTRODUCTION**

2 Plaintiffs John Dorman and Joel Gamboa filed a joint motion to file a Third Amended
3 Complaint alleging claims for punitive damages against Defendants. Specifically, John Dorman
4 seeks to assert a claim for punitive damages against Defendant Linda Vista Spanish
5 Congregation of Jehovah's Witnesses, San Diego, California (Linda Vista) and Defendant
6 Watchtower Bible and Tract Society of New York, Inc. (Watchtower). Joel Gamboa seeks to
7 assert a claim for punitive damages against Linda Vista, Watchtower and Defendant La Jolla
8 Spanish Congregation of Jehovah's Witnesses, San Diego, California (Playa Pacifica). Plaintiffs
9 were both molested by Gonzalo Campos (Campos) on numerous occasions when they were
10 minors associated with Defendants.

11 In response to Plaintiffs' joint motion to amend, the three Church Defendants filed
12 separate Oppositions. For the sake of increased clarity, Plaintiffs will file three reply briefs - one
13 for each Opposition. This brief is filed by Plaintiff Joel Gamboa in reply to the Opposition filed
14 by Defendant Playa Pacifica.

15 Defendant Playa Pacifica essentially opposes Plaintiff Gamboa's attempt to amend his
16 complaint to state a claim for punitive damages on two bases. First, Playa Pacifica claims that
17 Plaintiff's motion is unreasonably late, and Playa Pacifica would suffer prejudice as a result of
18 that purported tardiness. Second, Playa Pacifica claims that it had no notice of Campos'
19 propensity to molest children, and therefore did not act with malice sufficient to justify the
20 imposition of punitive damages.

21 Playa Pacifica's Opposition must fail since a long line of authority bears witness to this
22 State's policy of liberally permitting amendments to pleadings, even up to and during trial.
23 Plaintiff did not delay in bringing this motion, but instead filed it diligently after obtaining
24 necessary evidence supporting the motion. Defendant, on the other hand, delayed the bringing of
25 Plaintiff's motion by objecting to the production of documents and forcing Plaintiff to bring a
26 motion to compel; not producing Campos to be deposed until September 2, 2011, and opposing
27 Plaintiff's effort to specially set the hearing date on Plaintiff's motion for November 10, 2011.
28 Plaintiff acted diligently, and Playa Pacifica will suffer no prejudice if Plaintiff is permitted to

1 amend his complaint.

2 The evidence provided by Plaintiff is overwhelming that Playa Pacifica acted with
3 malice. It was provided with knowledge of Campos' molestation of children both prior to, and
4 contemporaneous with, the molestation of Plaintiff Gamboa yet did nothing to stop the
5 molestation. Plaintiff's motion should be granted.

6 **II. PLAINTIFF'S MOTION TO AMEND HIS COMPLAINT TO STATE A CLAIM
7 FOR PUNITIVE DAMAGES WAS FILED WITHIN A REASONABLE TIME OF
8 OBTAINING NECESSARY EVIDENCE, AND PLAYA PACIFICA WOULD NOT
9 BE PREJUDICED BY THE INCLUSION OF SUCH A CLAIM**

10 "A court, at any time before or after commencement of trial, may allow an amendment to
11 a pleading in furtherance of justice." *Higgins v. Del Faro* (1981) 123 Cal.App.3d 558, 564
(underline emphasis added.) In *Honig v. Financial Corporation of America*, the court noted:

12 "Motions to amend are appropriately granted as late as the first day of trial (e.g., *Higgins*
13 *v. Del Faro* (1981) 123 Cal.App.3d 558 [176 Cal.Rptr. 704]) or even during trial (*Rainer*
14 *v. Community Memorial Hosp.* (1971) 18 Cal.App.3d 240, 251-256 [95 Cal.Rptr. 901]) if
the defendant is alerted to the charges by the factual allegations, no matter how framed (*Hirsa v. Superior Court* (1981) 118 Cal.App.3d 486, 489 [173 Cal.Rptr. 418]) and the
defendant will not be prejudiced."

15 (1992) 6 Cal.App.4th 960, 965; *See Deetz v. Carter* (1965) 232 Cal.App.2d 851, 856-857 (since
16 the underlying facts of the claim were not changed, no abuse of discretion to grant plaintiffs leave
17 to amend complaint on the day of trial, even though conceivably the last minute change could
18 dramatically affect trial plans, and there was no good reason why the plaintiffs could not have
19 sought such an amendment prior to the day of trial); *Daum Development Corp. v. Yuba Plaza,*
20 *Inc.* (1970) 11 Cal.App.3d 65, 75-76 (no abuse of discretion to allow plaintiffs to file third
21 amended complaint adding new theory of breach of contract after trial began because new
22 pleading did not assert a new cause of action, only a new theory, and defendants could not claim
23 to be surprised by the theory.)

24 In *Honig*, the complaint was filed in February of 1988, while the plaintiff was still
25 employed by the defendant. *Id.* The plaintiff was terminated from his employment in April of
26 1988. *Id.* The action was scheduled for trial on November 13, 1990. *Id.* Defendants' motions
27 for summary judgment were filed in September of 1990, and when the plaintiff filed his
28 opposition to the summary judgment motions, he also filed a motion to amend to add new

1 paragraphs relating to the plaintiff's existing claims, and also to add a new claim for defamation.
2 *Id.* at 965-66. The court determined that since the defendants were aware of the facts underlying
3 the new claim in advance of the motion, and had deposed the plaintiff regarding those issues, no
4 prejudice inured to the defendant as a result of the proposed amendment. *Id.* at 966.

5 The same is true here. Plaintiff Gamboa asserts claims that Playa Pacifica negligently,
6 hired, retained, supervised, and failed to warn of the dangers posed by Campos; that Playa
7 Pacifica breached a confidential duty to Plaintiff; and that Playa Pacifica negligently failed to
8 warn, train or educate Plaintiff. Plaintiff Gamboa also claims that, by virtue of the vicarious
9 liability doctrine of ratification, Playa Pacifica is liable for the sexual harassment and sexual
10 battery of Plaintiff by Campos. (Plaintiff's Exhibit 22; Proposed Third Amended Complaint.)

11 The evidence Plaintiff will offer to prove Playa Pacifica's liability is the same evidence
12 that Plaintiff will introduce to establish that Playa Pacifica is liable for punitive damages. In fact,
13 the theory of ratification is both a basis for which Playa Pacifica is liable for punitive damages,
14 and an underlying theory of liability in the case in chief. There is no difference in the evidence
15 that would be introduced, and no need for additional discovery by either party relating to the
16 punitive damages claim. Plaintiff's motion to amend should be granted.

17 **A. Plaintiff's Motion to Amend was Timely Made**

18 Playa Pacifica claims that Gamboa was dilatory in pursuing his motion to amend to allege
19 punitive damages. Playa Pacifica argues Plaintiff could have included a claim for punitive
20 damages at the time of the filing of the complaint, or at the latest in October of 2010 after
21 receiving many of the documents attached as Exhibits to Plaintiffs' motion.¹ Playa Pacifica's

22
23 ¹ Defendant concedes that since it is not a religious corporation, or religious corporation
24 sole, it is not entitled to the protections of Code of Civil Procedure § 425.14. In light of that
25 concession, Playa Pacifica argues that a claim for punitive damages against it could have been
26 included in the complaint long ago, and that it would be prejudiced by the addition of such a
27 claim at this time. Defendant's argument fails to establish any prejudice. Even if Plaintiff had
28 the information it needed and could have added a claim for punitive damages against Playa
Pacifica, a motion to amend to allege punitive damages could not have been made with respect to
Defendant Watchtower until now, since that Defendant is a religious corporation and is entitled
to the benefits of Code of Civil Procedure § 425.14. The motion to amend to allege punitive
damages as to that Defendant could not have been brought earlier than it was, if Defendant is
correct and a continuance is necessary, it would have been needed regardless of whether Plaintiff
moved to amend to assert a claim for punitive damages against Playa Pacifica earlier.

1 argument regarding the purported tardiness of Plaintiff's motion does not hold up under scrutiny.

2 Much of the evidence relied upon by Plaintiff only became available to Plaintiff recently.
3 For instance, Plaintiff did not have access to Exhibit 5, Exhibit 7, Exhibit 11, Exhibit 12, Exhibit
4 14, Exhibit 15, Exhibit 16, Exhibit 18, Exhibit 19, Exhibit 20 or Exhibit 21 until July 13, 2011,
5 after Plaintiff had successfully compelled production of those documents over Defendants'
6 objections and assertions of privilege. (Declaration of Devin M. Storey at ¶10.) Plaintiff could
7 not possibly have relied on such documents before he had won access to them.

8 Defendant claims some of the documents listed above were provided to Plaintiff on
9 October 10, 2010, and others were produced on July 13, 2011. This statement is incomplete and
10 misleading. As Defendant is well aware, the documents identified on October 11, 2010 were
11 produced subject to protective order. (PE 23, December 16, 2010 Protective Order.) Plaintiff's
12 use of such documents was limited "to the sole and exclusive purpose of Plaintiffs' preparation
13 for mediation." (PE 23, December 16, 2010 Protective Order, at ¶ 4.) Pursuant to that stipulated
14 order, Plaintiff could not rely on said documents for any other purpose (including making a
15 motion to amend) until they were provided by Playa Pacifica and Watchtower on July 13, 2011
16 following an order of this Court.

17 Next, due to his flight from the Country, the deposition of Gonzalo Campos was not
18 taken until September 2, 2011. (Storey Dec. at ¶ 11.) Excerpts from Campos' deposition are
19 attached as Exhibit 3 to Plaintiffs' motion to amend.

20 After obtaining the documents referenced above and taking the deposition of Campos,
21 Plaintiffs' motion to amend was ready to be filed on October 13, 2011. (Storey Dec. at ¶ 12.) In
22 the days preceding the completion of Plaintiffs' motion, Plaintiffs' Counsel was informed by the
23 Court that the first available date for the hearing of such a motion was on December 2, 2011.
24 (Storey Dec. at ¶ 13.) Plaintiffs appeared ex parte on October 13, 2011 to specially set a hearing
25 date on Plaintiffs' motion for November 10, 2011, which would have resulted in the motion
26 being decided two and a half months prior to trial. (Storey Dec. at ¶14.) Plaintiff also indicated
27

1 willingness to have a motion for summary adjudication of the issue of punitive damages heard on
2 short notice. (Storey Dec. at ¶14.)

3 Defendants opposed Plaintiff's request to specially set the hearing date and the ex parte
4 was denied. (Storey Dec. at ¶15.) Plaintiffs' motion was consequently filed on November 7,
5 2011, which allowed for the statutorily required notice to Defendants of the December 2, 2011,
6 hearing. (Storey Dec. at ¶ 15.) Plaintiff acted diligently in preparing and filing his motion to
7 amend, particularly in light of when much of the evidence relied upon by Plaintiff was obtained.

8 **B. Defendant will Suffer no Prejudice from the Amendment**

9 Defendant will suffer no prejudice as a result of allowing Plaintiff to amend his complaint
10 to assert a claim for punitive damages, but Plaintiff would be severely prejudiced if his
11 amendment was denied on procedural bases. Defendant is entitled to assert objections and
12 privileges in response to a request for production of documents, but in this case, those assertions
13 of privilege precluded Plaintiff from accessing the evidence supporting his claim for punitive
14 damages until July of this year. Additional relevant evidence was obtained in September. If this
15 Court were to find that Plaintiff's motion is untimely and deny Plaintiff the opportunity to amend
16 his complaint, it would be doing so because Plaintiff was required to bring a motion to compel to
17 obtain relevant and unprivileged documents supporting the motion. This would reward
18 Defendant for declining to produce relevant and unprivileged documents, while punishing
19 Plaintiff despite his diligent pursuit of his claim.

20 **1. Playa Pacifica has not stated any cognizable prejudice that would**
21 **result from the amendment**

22 Defendant claims that if Plaintiff's motion to amend is granted, it will be prejudiced
23 because: 1) a continuance of the trial would be needed so it could "study its exposure for punitive
24 damages"; 2) witnesses would need to be re-interviewed or re-deposed to obtain further details in
25 light of this new exposure; 3) expert witness designations would need to be amended to address
26 the issue of punitive damages; 4) new costs associated with responding to Plaintiffs' claim for
27 punitive damages would be incurred; and 5) Playa Pacifica would be precluded from bringing a
28 motion to strike or motion for summary judgment challenging the new allegations as a result of

1 the motion cutoff date. (Defendant's Opposition at 5-6.) None of these arguments demonstrate
2 any recognizable prejudice that would require the denial of Plaintiff's motion.

3 As to the claim that Defendant will need to "study its exposure for punitive damages," it
4 is difficult to believe that Playa Pacifica has not already done so. Counsel for Playa Pacifica was
5 informed months ago that after Plaintiffs filed their motion to compel, a motion to amend to
6 allege punitive damages was contemplated. (Storey Dec. at ¶¶ 6, 8; PE 24, Plaintiffs' April 14,
7 2011 Case Management Conference Statement.) If Defendant chose not to consider that such
8 liability was possible, any resulting prejudice was of its own making. Regardless, Plaintiff's
9 motion to amend is being heard on December 2, 2011, eight full weeks prior to the scheduled
10 trial date. No continuance is necessary and no prejudice inures to the detriment of Playa Pacifica
11 since Defendant has ample time to study its exposure prior to the commencement of trial.

12 The need to re-interview or re-depose witnesses is a doubtful proposition. The punitive
13 damages claim will encapsulate the same facts that support the underlying action. This discovery
14 has already been largely completed. Moreover, re-interviewing witnesses would pose no burden
15 to Playa Pacifica since Defendants produced every witness who has given testimony in this case
16 other than Plaintiffs. Most of those witnesses were represented by the same Counsel who
17 represents Playa Pacifica. Defendant will suffer no prejudice if the Plaintiff's motion is granted.

18 Nor does Defendant's argument that it will experience additional costs as a result of the
19 amendment establish the type of prejudice that would warrant the denial of Plaintiff's motion.
20 An analogous argument was made and rejected in *Hirsa*, where defendant claimed that if an
21 amendment was permitted, it would allow otherwise inadmissible evidence to become admissible
22 at trial. 118 Cal.App.3d at 490. The court noted: "At oral argument counsel conceded that if
23 plaintiff had included the negligent entrustment theory in his original complaint, the evidence of
24 defendant Fred Vickers' driving record would be relevant and admissible. Such evidence is not
25 transmuted to a 'prejudicial' matter by later amendment to the pleadings." *Id.*

26 The same is true here. If Plaintiff had obtained evidence to support its motion to amend
27 at an earlier date, Defendant would have had to expend the same resources dealing with the
28 claim. The fact that the need to expend such resources will arise as a result of the instant motion

1 does not transmute the matter into prejudice. Defendant's related argument that it will be
2 prejudiced by the need to supplement its expert witness designation is similarly unavailing since
3 Defendant has ample time to do so prior to trial and will enjoy the right to completely defend
4 itself, simply with one more expert witness.

5 As to Defendant's claim that it would be prejudiced by the inability to file a motion for
6 summary adjudication or motion to strike the punitive damages claim, it is wholly unclear that
7 the inability to bring such a motion is "prejudice." Amendments to add new theories are
8 routinely allowed during trial. *See Daum Development Corp.*, 11 Cal.App.3d 65; *Deetz*, 232
9 Cal.App.2d 851. Defendant retains the ability to challenge the punitive damage theory through a
10 motion in limine or to have the trial bifurcated on the issue of punitive damages.

11 Moreover, if Defendant would suffer prejudice, it has invited it. Plaintiff sought an ex
12 parte order of this Court specially setting the hearing of the instant motion for November 10,
13 2011. This would have allowed Defendant sufficient time to bring a motion to strike prior to the
14 motion cut off, or to file a motion for summary judgment on stipulated short notice. Defendant
15 opposed the ex parte request that would have allowed it ample time to proceed with a motion to
16 strike prior to the motion cutoff date. (Storey Dec. at ¶ 15.) Defendant should not be allowed to
17 attempt to create its own prejudice and then use it against Plaintiff. Defendant made its bed, and
18 should now be required to sleep in it.

19 **III. PLAYA PACIFICA WAS GUILTY OF MALICE SUFFICIENT TO JUSTIFY**
20 **THE AMENDMENT OF PLAINTIFF'S COMPLAINT TO ASSERT A CLAIM**
21 **FOR PUNITIVE DAMAGES**

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

26 According to *Weeks v. Baker & McKenzie*:

27 Subdivision (b) [of Civil Code § 3294] authorizes the imposition of punitive
28 damages on an employer in three situations: (1) when an employee was guilty
of oppression, fraud or malice, and the employer with advance knowledge of the unfitness
of the employee employed him or her with a conscious disregard of the rights and safety
of others, (2) when an employee was guilty of oppression, fraud or malice, and the

1 employer authorized or ratified the wrongful conduct, or (3) when the employer was itself
2 guilty of the oppression, fraud or malice. (1998) 63 Cal.App.4th 1128, 1151.

3 Thus, "[I]f the employer after knowledge or opportunity to learn of the agent's
4 misconduct retains the wrongdoer in service, the employer may make himself liable in punitive
5 damages." *Coats v. Construction & General Laborers Local No. 185* (1971) 15 Cal.App.3d 908,
6 914. Malice does not require actual intent to harm." *Angie M. v. Superior Court* (1995) 37
7 Cal.App.4th 1217, 1228. "A conscious disregard for the safety of others may constitute the
8 malice necessary to sustain a claim for punitive damages." *Taylor v. Superior Court* (1979) 24
9 Cal.3d 890, 895.

10 Defendant claims that Plaintiff has not submitted evidence sufficient to establish that
11 Playa Pacifica acted with malice.² Playa Pacifica acknowledges that it received written notice of
12 the molestation of John Dorman in June of 1994. (Defendant's Opposition at 9; PE 16, June 9,
13 1994 letter.) Following that complaint, Campos continued to serve as an Elder, Secretary of the
14 Congregation, and as an Auxiliary Pioneer until at least April of 1995. (PE 17, April 4, 1995
15 letter; PE 5, March 29, 1995 letter; PE 3, Campos Depo at pp. 104:18-110:19.) During that time
16 Campos gave Joel Gamboa bible study lessons (PE 26, Deposition of Joel Gamboa at 26:7-24),
17 and completed and turned in forms to Playa Pacifica informing Defendant that it had given Joel
18 Bible Study sessions. (PE 3, Campos Depo at p. 90:8-25.) Joel Gamboa continued to be
19 molested until at least December of 1994, at least six months after Playa Pacifica received the
20 written Dorman complaint. (PE 7, June 9, 1995 letter; PE 3, Campos Depo at p. 78:8-15.)

21 Without more, a jury could, and almost certainly would, find that Playa Pacifica acted
22 with a conscious disregard for the safety of Joel Gamboa and others and that sufficient evidence
23 has been submitted to support an award of punitive damages. But there is more.

24 Plaintiff has submitted evidence that expressly states that a judicial committee regarding
25 Campos' sexual abuse of children occurred in 1986, and that Luis Rivera was an elder that
26 participated in that judicial committee. (PE 5, March 29, 1995 letter.) The letter at issue was

27 ² This argument that Plaintiff has not established a sufficient basis for amending his
28 complaint to pursue punitive damages is completely at odds with the argument raised previously,
that Plaintiff had sufficient evidence to amend his complaint at the time it was filed.

1 signed by Luis Rivera. (PE 5, March 29, 1995 letter.) Plaintiff has also submitted evidence that
2 Luis Rivera was an elder at Playa Pacifica from its creation. (PE 13, Letter Date Stamped
3 November 20, 1986.) “The principal is charged with knowledge which his agent acquires before
4 the commencement of the relationship when that knowledge can reasonably be said to be present
5 in the mind of the agent while acting for the principal.” *O’Riordan v. Federal Kemper Life*
6 *Assurance Co.* (2005) 36 Cal.4th 281, 288. Plaintiff has submitted affirmative evidence that
7 Playa Pacifica was on notice of Campos’ sexual abuse of children from its creation.

8 Defendant has submitted testimony given in the deposition of Luis Rivera that Rivera
9 partook in a meeting with Linda Vista Elders Justino Diaz and Dennis Palmer where an
10 accusation against Campos was discussed sometime between 1986 and 1995. According to Luis
11 Rivera, this meeting was not a judicial committee. (Defendant’s Opposition at 7-8.) At best
12 Defendant’s evidence raises a credibility issue as to which statement by Luis Rivera should be
13 accepted. A jury must be allowed to weigh Mr. Rivera’s credibility.

14 Based on the Dorman complaint and continued molestation of Joel Gamboa, and also on
15 the written evidence of the 1986 Judicial Committee regarding molestation by Campos, a jury
16 could easily find that Playa Pacifica acted with conscious disregard for the safety of others, and is
17 therefore liable for punitive damages. Plaintiff’s motion to amend his complaint to assert a claim
18 for punitive damages against Playa Pacifica should be granted.

19 IV. CONCLUSION


20 Plaintiff successfully compelled the production of fourteen documents from Defendants
21 in July of 2011. Those documents were produced on July 13, 2011. Plaintiff had previously seen
22 those documents, but was precluded by protective order from using those documents for any
23 purpose unrelated to mediation. Eleven of those documents are attached as Exhibits to Plaintiffs’
24 Motion to Amend. Plaintiff could not have utilized those documents, which form the heart of
25 this motion to amend, until prevailing on the motion to compel. Later, on September 2, 2011, the
26 deposition of Campos was taken in Mexico. Portions of the transcript of that deposition,
27 including confessions by Campos, are attached as an Exhibit to Plaintiffs’ motion.

28 Defendant would suffer no prejudice from the granting of Plaintiff’s motion. Eight full

1 weeks separate the hearing of Plaintiff's motion and the scheduled start of trial. Defendant has
2 ample time to prepare for trial. Since this State embraces a policy of allowing amendment of
3 pleadings during trial, there is no basis to claim that the inability to file a motion to strike
4 Plaintiff's punitive damage claim constitutes prejudice, but if it did, Defendant would have
5 created that prejudice itself. Plaintiff offered Defendants an opportunity to have this motion
6 heard with sufficient time to allow for the filing of such a challenge, and Defendant opposed
7 Plaintiff. If Defendant will suffer prejudice, it was created by Defendant's own actions. In short,
8 Plaintiff diligently pursued his claim and filed this motion when the evidence permitted it.
9 Defendant slowed the prosecution of this action and delayed the hearing of the instant motion.
10 Plaintiff should not be prejudiced by the tactic of the Defendants. Since Playa Pacifica acted
11 with malice, Plaintiff's motion should be granted.

12
13 Dated: 11-23-11

Respectfully submitted,


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10 I, Lisa E. Maynes, am employed in the city and county of San Diego, State of
11 California. I am over the age of 18 and no a party to the action; my business address is 12555
12 High Bluff Drive, Suite 260, San Diego, CA 92130.

13 On November 23, 2011, I caused to be served:

14 **PLAINTIFFS REPLY TO DEFENDANT PLAYA PACIFICA SPANISH**
15 **CONGREGATION'S OPPOSITION TO PLAINTIFFS' MOTION TO ALLEGE**
16 **PUNITIVE DAMAGES**

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

19 **SEE ATTACHED SERVICE LIST**

20 (BY MAIL) I am readily familiar with the firm's practice of collection and processing
21 correspondence for mailing. Under that practice it would be deposited with the U.S.
22 Postal Service on that same day with postage thereon fully prepaid at San Diego,
23 California, in the ordinary course of business. I am aware that on motion of the party
24 served, service is presumed invalid if postal cancellation date or postage meter date is
25 more than one day after date of deposit for mailing in affidavit.

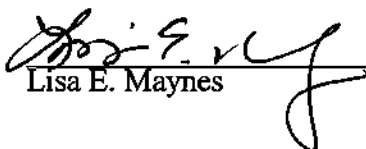
26 (BY PERSON SERVICE) By causing to be delivered by hand to the offices of the
27 addressee(s).

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

(BY FAX) I caused to be transmitted to the above-described document by facsimile
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
List with fax numbers indicated.)

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

Dated: 11-24-11



Lisa E. Maynes

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